Indiana Register

Volume 28, Number 8
Pages 2343-2654

May 1,
2005

Retain this issue as a supplement to the Indiana Administrative Code (See p. 2344)

The Indiana Register is on the Internet at:
www.in.gov/legislative/

Published By
Legislative Services Agency
317/232-9557

recycled paper

This issue contains documents officially filed through 4:45 p.m., April 11, 2005

IN THIS ISSUE

INDIANA REGISTER

is published monthly by the Indiana Legislative Council, Room 302 State House, Indianapolis, Indiana 46204-2789. An order form is on the back of this issue. Subscription price is $60 for Volume 28, in advance.

Indiana Register
Legislative Services Agency
200 West Washington Street, Suite 302
Indianapolis, IN 46204-2789

Indiana Legislative Council

Senator Robert D. Garton, Chairman
Representative Brian Bosma, Vice Chairman

Senator James W. Merritt
Senator Richard Young, Jr.
Senator James Lewis
Vacant
Vacant
Vacant
Vacant

Representative William Friend
Representative Kathy Richardson
Representative P. Eric Turner
Representative Timothy Brown
Representative B. Patrick Bauer
Representative F. Dale Grubb
Vacant

Philip J. Sachtleben, Executive Director

Indiana Code Revision Commission

Senator Luke Kenley, Chairman

Senator Rose Ann Antich-Carr
Senator Anita Bowser
Senator Sue Landske
Representative Robert Behning
Representative Ralph Foley
Representative Robert Kuzman
Vacant

Chief Judge James S. Kirsch
Jon Laramore
Dave Remondini
Heather Willis
Jennifer Thuma
Prof. Thomas B. Allington
Joe Champion

Stephen G. Barnes, Managing Editor

Kimbra K. Salt, Editorial Assistant

Becky Walker, Data Processing Manager

RELATION OF THE INDIANA REGISTER TO THE INDIANA ADMINISTRATIVE CODE

The Indiana Register is an official monthly publication of the state of Indiana. The Indiana Legislative Council publishes the full text of proposed rules, final rules, and other documents, such as executive orders and attorney general's opinions, in the Indiana Register in the order in which the Indiana Legislative Council receives the documents.

The Indiana Administrative Code is an official annual publication of the state of Indiana. It codifies the current general and permanent rules of state agencies in subject matter order.

The Indiana Register acts as a source of information about the rules being proposed by state agencies and acts as an "advance sheet" to the Indiana Administrative Code. With few exceptions, an agency may not adopt a rule, i.e., a policy statement having the force of law, without publishing a substantially similar proposed version in the Indiana Register. Although a rule becomes effective without publication in the Indiana Register, an agency must file an adopted and approved rule with the Indiana Legislative Council. The Council publishes these final rules in the Indiana Register.

RETENTION SCHEDULE

A person must consult the following publications to find the current rules of state agencies:

(1) 2005 Indiana Administrative Code (CD-ROM version).

(2) Volume 28 of the Indiana Register (CD-ROM version).

The Indiana Administrative Code and Indiana Register are distributed in CD-ROM format only. Both are also accessible at www.in.gov/legislative/ic_iac/.

The 2004 Edition of the Indiana Administrative Code and other volumes of the Indiana Register may be discarded. (Please consider recycling.)

JUDICIAL NOTICE AND CITATION FORM

IC 4-22-9 provides for the judicial notice of rules published in the Indiana Register or the Indiana Administrative Code. Subject to any errata notice that may affect a rule, the latest published version of a final rule is prima facie evidence of that rule's validity and content.

Cite to a current general and permanent rule by Indiana Administrative Code citation, regardless of whether it has been published in a supplement to the Indiana Administrative Code. For example, cite the entire current contents of title 312 as "Title 312 of the Indiana Administrative Code," cite the entire current contents of the third article in title 312 as "312 IAC 3," cite the entire current contents of the fourth rule in article three as "312 IAC 3-4," and cite part or all of the current contents of the second section in rule four as "312 IAC 3-4-2." IC 4-22-9-6 provides that a citation in this form contains later adopted amendments. Cite a noncodified rule provision by LSA document number, SECTION number, and Indiana Register citation to the page at which the cited text begins. If a reference to a particular version of a rule or a page in the Indiana Register is appropriate, cite the volume, page, and year of publication as "25 Ind. Reg. 120 (2002)." A shorter Indiana Register citation form is "25 IR 120."

PRINTING CODE

This style type is used to indicate that substantive text is being inserted by amendment into a rule, and ~~this style type~~ is used to indicate that substantive text is being eliminated by amendment from a rule. ~~This style type~~ is replaced by a single large "X" to show the elimination of a form or other piece of artwork. **This style type** is used to indicate a rule is being added. *This style type* and **this style type** also are used to highlight nonsubstantive annotations to a rule and to indicate that an entry in a reference table or the index concerns a final rule.

REFERENCE TABLES AND INDEX

The page location of rules and other documents printed in the Indiana Register may be found by using the tables and index published in the Indiana Register. A citation listing of the general and permanent rules affected in a volume and a cumulative index are published in each issue. Cumulative tables that cite executive orders, attorney general's opinions, and other nonrule policy documents printed in a calendar year are published quarterly.

FILING AND PUBLISHING SCHEDULE

NOTICE AND PUBLICATION SCHEDULE. The Legislative Services Agency publishes documents filed by 4:45 p.m. on the tenth day of a month (no later than the twelfth day of a month, excluding holidays or weekends) in the following month's Indiana Register according to the schedule below:

PUBLICATION SCHEDULE

Closing Dates:	Publication Dates:	Closing Dates:	Publication Dates:
April 11, 2005	May 1, 2005	November 10, 2005	December 1, 2005
May 10, 2005	June 1, 2005	December 9, 2005	January 1, 2006
June 10, 2005	July 1, 2005	January 10, 2006	February 1, 2006
July 11, 2005	August 1, 2005	February 10, 2006	March 1, 2006
August 10, 2005	September 1, 2005	March 10, 2006	April 1, 2006
September 9, 2005	October 1, 2005	April 10, 2006	May 1, 2006
October 10, 2005	November 1, 2005	May 10, 2006	June 1, 2006

Documents will be accepted for filing on any business day from 8:00 a.m. to 4:45 p.m.

AROC NOTICES: Under IC 2-5-18-4, the Administrative Rules Oversight Committee is established to oversee the rules of any agency not listed in IC 4-21.5-2-4. As a result, certain notices to the AROC are required and are printed in the Indiana Register.

CORRECTIONS: IC 4-22-2-38 authorizes an agency to correct typographical, clerical, or spelling errors in a final rule without initiating a new rulemaking procedure. Correction notices are printed on errata pages in the Indiana Register.

EFFECTIVE DATE: IC 4-22-2-36 provides that, unless a later date is specified in the rule, a rule becomes effective thirty (30) days after filing with the Secretary of State.

EMERGENCY RULES: IC 4-22-2-37.1 provides summary rulemaking procedures for certain specified categories of rules.

INCORPORATION BY REFERENCE: IC 4-22-2-21 requires that a copy of matters that are incorporated by reference into a rule must be filed with the Attorney General, the Governor, and the Secretary of State along with the text of the incorporating final rule.

NONRULE POLICY DOCUMENTS: IC 4-22-7-7 requires that any nonrule document that interprets, supplements, or implements a statute and that the issuing agency may use in conducting its external affairs must be filed with the Legislative Services Agency and published in the Indiana Register.

NOTICE OF INTENT TO ADOPT A RULE: IC 4-22-2-23 requires an agency to publish a Notice of Intent to Adopt a Rule at least thirty (30) days before publication of the proposed rule.

PROMULGATION PERIOD: In order to be effective, the final version of an adopted rule must be approved by the Attorney General and the Governor within one (1) year after the date that the notice of intent is published. The final rule must then be filed with the Secretary of State.

PUBLIC HEARINGS: IC 4-22-2-24 requires that the public hearing on a proposed rule be scheduled at least twenty-one (21) days after a notice of the hearing is published in the Indiana Register and in a newspaper of general circulation in Marion County.

RULES READOPTION: IC 4-22-2.5 provides that a rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect, unless the rule contains an earlier expiration date.

State Agencies

ALPHABETICAL LIST

AGENCY	TITLE NUMBER
Accountancy, Indiana Board of	872
Accounts, State Board of	20
Adjutant General	270
Administration, Indiana Department of	25
†Administrative Building Council of Indiana	660
†Aeronautics Commission of Indiana	110
†Aging and Community Services, Department on	450
†Agricultural Development Corporation, Indiana	770
†Agricultural Experiment Station	350
†Agriculture, Commissioner of	340
Agriculture, Commissioner of	375
†Air Pollution Control Board	325.1
Air Pollution Control Board	326
†Air Pollution Control Board of the State of Indiana	325
Alcohol and Tobacco Commission	905
Amusement Device Safety Board, Regulated	685
Animal Health, Indiana State Board of	345
Architects and Landscape Architects, Board of Registration for	804
Athletic Trainers Board, Indiana	898
Attorney General for the State, Office of	10
Auctioneer Commission, Indiana	812
Barber Examiners, Board of	816
Boiler and Pressure Vessel Rules Board	680
Boxing Commission, State	808
Budget Agency	85
Chemist of the State of Indiana, State	355
Children's Health Insurance Program, Office of the	407
Chiropractic Examiners, Board of	846
Civil Rights Commission	910
†Clemency Commission, Indiana	230
Commerce, Department of	55
Community Residential Facilities Council	431
Consumer Protection Division of the Office of the Attorney General	11
Controlled Substances Advisory Committee	858
Coroners Training Board	207
Correction, Department of	210
Cosmetology Examiners, State Board of	820
Creamery Examining Board	365
Criminal Justice Institute, Indiana	205
Deaf Board, Indiana School for the	514
Dentistry, State Board of	828
†Developmental Disabilities Residential Facilities Council	430
Dietitians Certification Board, Indiana	830
Disability, Aging, and Rehabilitative Services, Division of	460
†Education, Commission on General	510
Education, Indiana State Board of	511
Education Employment Relations Board, Indiana	560
Education Savings Authority, Indiana	540
Egg Board, State	370
†Election Board, State	15
Election Commission, Indiana	18
†Elevator Safety Board	670
Emergency Management Agency, State	290
Emergency Medical Services Commission, Indiana	836
Employees' Appeals Commission, State	33
†Employment and Training Services, Department of	645
Engineers, State Board of Registration for Professional	864
Enterprise Zone Board	58
Environmental Adjudication, Office of	315
Environmental Health Specialists, Board of	896
†Environmental Management Board, Indiana	320
Ethics Commission, State	40
Fair Commission, State	80
Family and Children, Division of	470
Family and Social Services, Office of the Secretary of	405
Financial Institutions, Department of	750
Fire Marshal, State	650
Fire Prevention and Building Safety Commission	675
Firefighting Personnel Standards and Education, Board of	655
Forensic Sciences, Commission on	415
Funeral and Cemetery Service, State Board of	832
Gaming Commission, Indiana	68
Geologists, Indiana Board of Licensure for Professional	305
Grain Buyers and Warehouse Licensing Agency, Indiana	824
Grain Indemnity Corporation, Indiana	825
†Hazardous Waste Facility Site Approval Authority, Indiana	323
Health, Indiana State Department of	410
Health Facilities Council, Indiana	412
Health Facility Administrators, Indiana State Board of	840
†Highways, Department of	120
Home Inspectors Licensing Board	878
†Horse Racing Commission, Indiana	70
Horse Racing Commission, Indiana	71
Hospital Council	414
Housing Finance Authority, Indiana	930
†Human Service Programs, Interdepartmental Board for the Coordination of	490
†Industrial Board of Indiana	630
Information Technology Oversight Commission, State	28
Insurance, Department of	760
Labor, Department of	610
Land Surveyors, State Board of Registration for	865
Law Enforcement Training Board	250
Library and Historical Board, Indiana	590
†Library Certification Board	595
Local Government Finance, Department of	50
Lottery Commission, State	65
Manufactured Home Installer Licensing Board	879
†Medical and Nursing Distribution Loan Fund Board of Trustees, Indiana	580
Medical Licensing Board of Indiana	844
Mental Health and Addiction, Division of	440
Meridian Street Preservation Commission	925
Motor Vehicles, Bureau of	140
†Natural Resources, Department of	310
Natural Resources Commission	312
Nursing, Indiana State Board of	848
Occupational Safety Standards Commission	620
Optometric Legend Drug Prescription Advisory Committee, Indiana	857
Optometry Board, Indiana	852
Parole Board	220
†Personnel Board, State	30
Personnel Department, State	31
Pesticide Review Board, Indiana	357
Pharmacy, Indiana Board of	856
Plumbing Commission, Indiana	860
Podiatric Medicine, Board of	845
Police Department, State	240
Political Subdivision Risk Management Commission, Indiana	762
Port Commission, Indiana	130
Private Detectives Licensing Board	862
Professional Standards Board	515
Proprietary Education, Indiana Commission on	570
Psychology Board, State	868
Public Access Counselor, Office of the	62
Public Employees' Retirement Fund, Board of Trustees of the	35
Public Records, Oversight Committee on	60
Public Safety Training Board	280
Real Estate Commission, Indiana	876
†Reciprocity Commission of Indiana	145
Revenue, Department of State	45
Safety Review, Board of	615
School Bus Committee, State	575
Secretary of State	75
Securities Division	710
Seed Commissioner, State	360
Social Worker, Marriage and Family Therapist, and Mental Health Counselor Board	839
†Soil and Water Conservation Committee, State	311
Soil Scientists, Indiana Board of Registration for	307
†Solid Waste Management Board	320.1
Solid Waste Management Board	329
Speech-Language Pathology and Audiology Board	880
†Standardbred Board of Regulations, Indiana	341
†Stream Pollution Control Board of the State of Indiana	330
Student Assistance Commission, State	585
Tax Review, Indiana Board of	52
†Teacher Training and Licensing, Commission on	530
Teachers' Retirement Fund, Board of Trustees of the Indiana State	550
†Television and Radio Service Examiners, Board of	884
†Textbook Adoptions, Commission on	520
Toxicology, State Department of	260
†Traffic Safety, Office of	150
†Transportation, Department of	100
Transportation, Indiana Department of	105
Transportation Finance Authority, Indiana	135
Underground Storage Tank Financial Assurance Board	328
†Unemployment Insurance Board, Indiana	640
Utility Regulatory Commission, Indiana	170
†Vehicle Inspection, Department of	160
Veterans' Affairs Commission	915
Veterinary Medical Examiners, Indiana Board of	888
Victim Services Division	203
†Violent Crime Compensation Division	480
†Vocational and Technical Education, Indiana Commission on	572
†Wage Adjustment Board	635
War Memorials Commission, Indiana	920
†Watch Repairing, Indiana State Board of Examiners in	892
Water Pollution Control Board	327
†Water Pollution Control Board	330.1
Worker's Compensation Board of Indiana	631
Workforce Development, Department of	646

†Agency's rules are expired, repealed, transferred, or otherwise voided.

NUMERICAL LIST

TITLE NUMBER

GENERAL GOVERNMENT

10 Office of Attorney General for the State
11 Consumer Protection Division of the Office of the Attorney General
†15 State Election Board
18 Indiana Election Commission
20 State Board of Accounts
25 Indiana Department of Administration
28 State Information Technology Oversight Commission
†30 State Personnel Board
31 State Personnel Department
33 State Employees' Appeals Commission
35 Board of Trustees of the Public Employees' Retirement Fund
40 State Ethics Commission
45 Department of State Revenue
50 Department of Local Government Finance
52 Indiana Board of Tax Review
55 Department of Commerce
58 Enterprise Zone Board
60 Oversight Committee on Public Records
62 Office of the Public Access Counselor
65 State Lottery Commission
68 Indiana Gaming Commission
†70 Indiana Horse Racing Commission
71 Indiana Horse Racing Commission
75 Secretary of State
80 State Fair Commission
85 Budget Agency

TRANSPORTATION AND PUBLIC UTILITIES

†100 Department of Transportation
105 Indiana Department of Transportation
†110 Aeronautics Commission of Indiana
†120 Department of Highways
130 Indiana Port Commission
135 Indiana Transportation Finance Authority
140 Bureau of Motor Vehicles
†145 Reciprocity Commission of Indiana
†150 Office of Traffic Safety
†160 Department of Vehicle Inspection
170 Indiana Utility Regulatory Commission

CORRECTIONS, POLICE, AND MILITARY

203 Victim Services Division
205 Indiana Criminal Justice Institute
207 Coroners Training Board
210 Department of Correction
220 Parole Board
†230 Indiana Clemency Commission
240 State Police Department
250 Law Enforcement Training Board
260 State Department of Toxicology
270 Adjutant General
280 Public Safety Training Board
290 State Emergency Management Agency

NATURAL RESOURCES, ENVIRONMENT, AND AGRICULTURE

305 Indiana Board of Licensure for Professional Geologists
307 Indiana Board of Registration for Soil Scientists
†310 Department of Natural Resources
†311 State Soil and Water Conservation Committee
312 Natural Resources Commission
315 Office of Environmental Adjudication
†320 Indiana Environmental Management Board
†320.1 Solid Waste Management Board
†323 Indiana Hazardous Waste Facility Site Approval Authority
†325 Air Pollution Control Board of the State of Indiana
†325.1 Air Pollution Control Board
326 Air Pollution Control Board
327 Water Pollution Control Board
328 Underground Storage Tank Financial Assurance Board
329 Solid Waste Management Board
†330 Stream Pollution Control Board of the State of Indiana
†330.1 Water Pollution Control Board
†340 Commissioner of Agriculture
†341 Indiana Standardbred Board of Regulations
345 Indiana State Board of Animal Health
†350 Agricultural Experiment Station
355 State Chemist of the State of Indiana
357 Indiana Pesticide Review Board
360 State Seed Commissioner
365 Creamery Examining Board
370 State Egg Board
375 Commissioner of Agriculture

HUMAN SERVICES

405 Office of the Secretary of Family and Social Services
407 Office of the Children's Health Insurance Program
410 Indiana State Department of Health
412 Indiana Health Facilities Council
414 Hospital Council
415 Commission on Forensic Sciences
†430 Developmental Disabilities Residential Facilities Council
431 Community Residential Facilities Council
440 Division of Mental Health and Addiction
†450 Department on Aging and Community Services
460 Division of Disability, Aging, and Rehabilitative Services
470 Division of Family and Children
†480 Violent Crime Compensation Division
†490 Interdepartmental Board for the Coordination of Human Service Programs

TITLE NUMBER

EDUCATION AND LIBRARIES

†510 Commission on General Education
511 Indiana State Board of Education
514 Indiana School for the Deaf Board
515 Professional Standards Board
†520 Commission on Textbook Adoptions
†530 Commission on Teacher Training and Licensing
540 Indiana Education Savings Authority
550 Board of Trustees of the Indiana State Teachers' Retirement Fund
560 Indiana Education Employment Relations Board
570 Indiana Commission on Proprietary Education
†572 Indiana Commission on Vocational and Technical Education
575 State School Bus Committee
†580 Indiana Medical and Nursing Distribution Loan Fund Board of Trustees
585 State Student Assistance Commission
590 Indiana Library and Historical Board
†595 Library Certification Board

LABOR AND INDUSTRIAL SAFETY

610 Department of Labor
615 Board of Safety Review
620 Occupational Safety Standards Commission
†630 Industrial Board of Indiana
631 Worker's Compensation Board of Indiana
†635 Wage Adjustment Board
†640 Indiana Unemployment Insurance Board
†645 Department of Employment and Training Services
646 Department of Workforce Development
650 State Fire Marshal
655 Board of Firefighting Personnel Standards and Education
†660 Administrative Building Council of Indiana
†670 Elevator Safety Board
675 Fire Prevention and Building Safety Commission
680 Boiler and Pressure Vessel Rules Board
685 Regulated Amusement Device Safety Board

BUSINESS, FINANCE, AND INSURANCE

710 Securities Division
750 Department of Financial Institutions
760 Department of Insurance
762 Indiana Political Subdivision Risk Management Commission
†770 Indiana Agricultural Development Corporation

OCCUPATIONS AND PROFESSIONS

804 Board of Registration for Architects and Landscape Architects
808 State Boxing Commission
812 Indiana Auctioneer Commission
816 Board of Barber Examiners
820 State Board of Cosmetology Examiners
824 Indiana Grain Buyers and Warehouse Licensing Agency
825 Indiana Grain Indemnity Corporation
828 State Board of Dentistry
830 Indiana Dietitians Certification Board
832 State Board of Funeral and Cemetery Service
836 Indiana Emergency Medical Services Commission
839 Social Worker, Marriage and Family Therapist, and Mental Health Counselor Board
840 Indiana State Board of Health Facility Administrators
844 Medical Licensing Board of Indiana
845 Board of Podiatric Medicine
846 Board of Chiropractic Examiners
848 Indiana State Board of Nursing
852 Indiana Optometry Board
856 Indiana Board of Pharmacy
857 Indiana Optometric Legend Drug Prescription Advisory Committee
858 Controlled Substances Advisory Committee
860 Indiana Plumbing Commission
862 Private Detectives Licensing Board
864 State Board of Registration for Professional Engineers
865 State Board of Registration for Land Surveyors
868 State Psychology Board
872 Indiana Board of Accountancy
876 Indiana Real Estate Commission
878 Home Inspectors Licensing Board
879 Manufactured Home Installer Licensing Board
880 Speech-Language Pathology and Audiology Board
†884 Board of Television and Radio Service Examiners
888 Indiana Board of Veterinary Medical Examiners
†892 Indiana State Board of Examiners in Watch Repairing
896 Board of Environmental Health Specialists
898 Indiana Athletic Trainers Board

MISCELLANEOUS

905 Alcohol and Tobacco Commission
910 Civil Rights Commission
915 Veterans' Affairs Commission
920 Indiana War Memorials Commission
925 Meridian Street Preservation Commission
930 Indiana Housing Finance Authority

†Agency's rules are expired, repealed, transferred, or otherwise voided.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-215(F)

DIGEST

Amends 312 IAC 2-4-6 and 312 IAC 2-4-14, which governs fishing tournaments and other organized boating activities, to reduce from 90 days to 60 days the minimum period an application must be filed with the department of natural resources before the activity is to occur and to establish a licensure requirement for fishing tournaments on Sylvan Lake, Noble County. Effective October 1, 2005.

312 IAC 2-4-6
312 IAC 2-4-14

SECTION 1. 312 IAC 2-4-6 IS AMENDED TO READ AS FOLLOWS:

312 IAC 2-4-6 License application
Authority: IC 14-10-2-4; IC 14-15-7-3
Affected: IC 14

Sec. 6. (a) An application for a license to conduct a fishing tournament or other organized activity must be completed on a department form at least ~~ninety (90)~~ **sixty (60)** days before the date of the proposed tournament.

(b) An applicant must be an individual who is at least eighteen (18) years of age and a resident of Indiana.

(c) The applicant shall attach a copy of the proposed standards and regulations governing the activity.

(d) The department shall condition any license to achieve at least one (1) of the following:
(1) Prevention of unusual conditions or hazards.
(2) Promotion of scientific fish, wildlife, or botanical resource management.
(3) Assistance in the protection of users.

(e) To accomplish the purposes described in subsection (d), the department may do any of the following:
(1) Designate the starting time or ending time for an activity.
(2) Designate the time and location for the use of any public facilities.
(3) Spread starting times among license holders if more than one (1) is approved for a particular waterway.
(4) Restrict portions of the waterway from use by the participants.
(Natural Resources Commission; 312 IAC 2-4-6; filed Aug 3, 2001, 10:54 a.m.: 24 IR 3931, eff Jan 1, 2002; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 27, 2003, 12:35 p.m.: 26 IR 3319, eff Oct 1, 2003; filed Mar 18, 2005, 11:00 a.m.: 28 IR 2348, eff Oct 1, 2005)

SECTION 2. 312 IAC 2-4-14 IS ADDED TO READ AS FOLLOWS:

312 IAC 2-4-14 Limitations on organized boating activities at Sylvan Lake, Noble County
Authority: IC 14-10-2-4; IC 14-15-7-3
Affected: IC 14

Sec. 14. (a) This section governs organized boating activities on Sylvan Lake, Noble County.

(b) On the waters of Sylvan Lake, the maximum number of watercraft that can lawfully participate in a fishing tournament is as follows:
(1) One (1) tournament each day, consisting of no more than sixty-five (65) watercraft, for the period of April 1 through April 30.
(2) One (1) tournament each day, consisting of no more than fifty (50) watercraft, for the period of May 1 through September 30.

(c) For a tournament subject to subsection (b) that is scheduled to continue past midnight, the number of participating watercraft may be attributed to either day so as to facilitate the ability of an organized boating activity to use the lake. *(Natural Resources Commission; 312 IAC 2-4-14; filed Mar 18, 2005, 11:00 a.m.: 28 IR 2348, eff Oct 1, 2005)*

SECTION 3. **SECTION 1 and SECTION 2 are effective October 1, 2005.**

LSA Document #04-215(F)
Notice of Intent Published: September 1, 2004; 27 IR 4045
Proposed Rule Published: November 1, 2004; 28 IR 626
Hearing Held: December 15, 2004
Approved by Attorney General: February 18, 2005
Approved by Governor: March 17, 2005
Filed with Secretary of State: March 18, 2005, 11:00 a.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

TITLE 327 WATER POLLUTION CONTROL BOARD

LSA Document #03-130(F)

DIGEST

Adds 327 IAC 5-3.5 to establish a process and application requirements for obtaining a variance from the existing water quality criterion used to establish a water quality-based effluent limitation for mercury in wastewater discharges permitted under the National Pollutant Discharge Elimination System (NPDES) program. Effective 30 days after filing with the secretary of state.

HISTORY
First Notice of Comment Period: #03-130(WPCB), June 1, 2003, Indiana Register (26 IR 3171).

Second Notice of Comment Period and Notice of First Hearing: #03-130(WPCB), June 1, 2004, Indiana Register (27 IR 2884).

Date of First Hearing: September 8, 2004.

Third Notice of Comment Period and Notice of Second Hearing: #03-130(WPCB), November 1, 2004, Indiana Register (28 IR 644).

Change in Notice of Public Hearing: #03-130 (WPCB), January 1, 2005, Indiana Register (28 IR 1197).

Date of Second Hearing and Final Adoption: January 12, 2005.

327 IAC 5-3.5

SECTION 1. 327 IAC 5-3.5 IS ADDED TO READ AS FOLLOWS:

Rule 3.5. Streamlined Mercury Variance Requirements and Application Process

327 IAC 5-3.5-1 Purpose

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3
Affected: IC 13-18-4

Sec. 1. The purpose of this rule is to establish a streamlined process and application requirements for obtaining a variance from a water quality criterion used to establish a water quality-based effluent limitation for mercury in an NPDES permit. *(Water Pollution Control Board; 327 IAC 5-3.5-1; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2349)*

327 IAC 5-3.5-2 Applicability

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3
Affected: IC 13-14-8-9; IC 13-18-4

Sec. 2. (a) An SMV shall be available for the duration of the NPDES permit issued to a wastewater discharging facility that has an NPDES permit in effect containing a discharge limitation for mercury that cannot be achieved consistently by the facility.

(b) Application for a variance under this rule meets the requirements for a variance under IC 13-14-8-9 and rules adopted by the board.

(c) An SMV is not available for the following:

(1) New or recommencing Great Lakes system dischargers except as provided under 327 IAC 2-1.5-17(a)(3).

(2) Applicants seeking an interim limit whose effluent contains mercury at an average concentration, as determined under section 8(a) of this rule, greater than thirty (30) ng/l (parts per trillion).

(Water Pollution Control Board; 327 IAC 5-3.5-2; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2349)

327 IAC 5-3.5-3 Definitions

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3
Affected: IC 13-11-2; IC 13-18-4

Sec. 3. In addition to the definitions contained in IC 13-11-2 and 327 IAC 5 *[this article]***, the following definitions apply throughout this rule:**

(1) "Department" means the Indiana department of environmental management.

(2) "Facility" means any NPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program. For a municipality, "facility" means a POTW.

(3) "Pollutant minimization program" or "PMP" means a program developed by an SMV applicant to identify and minimize the discharge of mercury into the environment.

(4) "Pollutant minimization program plan" or "PMPP" means the plan for development and implementation of the PMP.

(5) "Publicly owned treatment works" or "POTW" means a treatment works as defined by Section 212(2) of the Federal Water Pollution Control Act owned by the state or a municipality as defined by Section 502(4) of the Federal Water Pollution Control Act.

(6) "Streamlined mercury variance" or "SMV" means a process established under this rule for obtaining a variance from the water quality criterion used to establish a water quality-based effluent limitation (WQBEL) established for mercury in an NPDES permit.

(Water Pollution Control Board; 327 IAC 5-3.5-3; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2349)

327 IAC 5-3.5-4 Initial SMV application

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3
Affected: IC 13-18-4

Sec. 4. (a) The initial SMV application shall be submitted on forms provided by the department.

(b) An applicant for an SMV may submit the application as a part of an application for a:

(1) new;

(2) renewed; or

(3) modified;

NPDES permit.

(c) The initial SMV application must include all information, including the PMPP, required under section 9 of this rule, PMPP requirements. Applications to renew an SMV shall comply with section 7 of this rule.

(d) Upon receipt of a complete SMV application, the department will publish a notice of completeness and availability of the SMV in accordance with section 5 of this rule, public notice of SMV application. The notice of completeness and availability will be published within thirty (30) days of receipt of a complete SMV application.

(e) In order for an application to be considered complete,

the application must contain all information required under section 9 of this rule, PMPP requirements. *(Water Pollution Control Board; 327 IAC 5-3.5-4; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2349)*

327 IAC 5-3.5-5 Public notice of SMV application

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3
Affected: IC 4-21.5; IC 13-18-4

Sec. 5. (a) The department shall publish notice of each complete SMV application for public comment:

(1) in the newspaper with the greatest circulation in the city or county of the applicant's location; and

(2) with a thirty (30) day public comment period.

(b) Public notice may be held simultaneously with the public notice procedures of a new, renewed, or modified NPDES permit.

(c) The department may hold a public hearing on the complete SMV application if a request is received during the public comment period. The public hearing may be held simultaneously with the public hearing or a new, renewed, or modified NPDES permit.

(d) The department shall consider public comments received during:

(1) the public comment period; and

(2) the public hearing, if one is held.

(e) The department may require an applicant to modify the SMV application if it is necessary in order for the SMV application to be consistent with the requirements of this rule.

(f) If the SMV application meets the requirements of this rule, the department shall incorporate the SMV into the NPDES permit in accordance with this rule within ninety (90) days, unless the applicant agrees to a longer time frame, following the close of the later of the following:

(1) The public comment period.

(2) The public hearing.

(g) A final determination under subsection (e) is an appealable decision under IC 4-21.5. *(Water Pollution Control Board; 327 IAC 5-3.5-5; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2350)*

327 IAC 5-3.5-6 Issuance of SMV

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3
Affected: IC 13-14-8-9; IC 13-18-4

Sec. 6. When an SMV is issued under this rule, the SMV shall be incorporated as a condition of the applicant's NPDES permit through issuance, renewal, or modification of the NPDES permit. The SMV remains in effect until the NPDES permit expires under IC 13-14-8-9. The NPDES permit shall include the requirements of the PMPP and any applicable interim discharge limitation. *(Water Pollution Control Board; 327 IAC 5-3.5-6; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2350)*

327 IAC 5-3.5-7 Renewal of SMV

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3
Affected: IC 13-14-8-9; IC 13-18-4

Sec. 7. (a) An eligible applicant may apply for a renewal of the SMV:

(1) one hundred eighty (180) days prior to the expiration of its NPDES permit; or

(2) within one hundred eighty (180) days after issuance of a revised NPDES permit that establishes a revised mercury discharge limit based on the water quality criteria.

(b) The department may renew an initial SMV in accordance with IC 13-14-8-9 if the applicant demonstrates that implementation of the PMPP has achieved progress toward the goal of reducing mercury from its discharge except as provided in subsection (d).

(c) A renewal application shall contain the following:

(1) All information required for an initial SMV application under section 4 of this rule, including revisions to the PMPP, if applicable.

(2) A report on implementation of each provision of the PMPP.

(3) An analysis of the mercury concentrations determined through sampling at the facility's locations that have mercury monitoring requirements in the NPDES permit for the two (2) year period prior to the SMV renewal application.

(4) A proposed alternative mercury discharge limit, if appropriate, to be evaluated by the department according to section 8(b) of this rule, based on the most recent two (2) years of representative sampling information from the facility.

(d) A PMPP must be revised if implementation of the original PMPP does not lead to demonstrable progress in minimizing the discharge of mercury. If the applicant can provide information, as part of a revision to a PMPP, that demonstrates there is no known reasonable additional action that will reduce mercury, the PMPP may remain as previously approved.

(e) A renewal SMV shall be issued in a timely manner and in accordance with the requirements for the issuance of an initial SMV under this rule. If an applicant submits an application for a renewal SMV at least one hundred eighty (180) days prior to the expiration of its NPDES permit, the

department shall make a final SMV decision, if requested by the applicant, concurrent with the final decision on the NPDES permit. *(Water Pollution Control Board; 327 IAC 5-3.5-7; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2350)*

327 IAC 5-3.5-8 SMV interim discharge limit

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3
Affected: IC 13-18-4

Sec. 8. (a) The interim limit for mercury discharge for the duration of an SMV shall be based on representative effluent data that have been analyzed using Analytical Method 1631 or any analytical method approved by the department. The interim limit shall be expressed as the highest daily value for mercury from a data set that includes a minimum of six (6) daily values that are generally evenly spaced over the most recent twelve (12) to twenty-four (24) month period and representative of the four (4) seasons. The highest daily value will become the value for the interim limit. Compliance with the interim limit is achieved if the average of the measured effluent daily values over the rolling twelve (12) month period is less than the interim limit. An SMV is not available to an applicant that requests an interim limit greater than thirty (30) ng/l (parts per trillion).

(b) The interim discharge limit shall be evaluated upon receipt of a renewal SMV application based upon available, valid, and representative data of the effluent levels for mercury collected and analyzed over the most recent two (2) year period. Data collection and analyses must be done according to Analytical Method 1631 or the analytical method approved by the department. *(Water Pollution Control Board; 327 IAC 5-3.5-8; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2351)*

327 IAC 5-3.5-9 PMPP requirements

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3
Affected: IC 13-18-4

Sec. 9. (a) A PMPP for a facility must be submitted with an application for an SMV. The PMPP must contain the following:

(1) Results of a preliminary inventory of potential uses and sources of mercury in all buildings and departments and a plan and schedule for providing the department results of a complete inventory.

(2) Preliminary identification of known mercury-bearing equipment, wastestreams, and mercury storage sites.

(3) A list of planned activities to be conducted to eliminate or minimize the release of mercury to the water. The list of planned activities may consider technical and economic feasibility and must include, at a minimum, the following:

(A) A review of purchasing policies and procedures.

(B) Necessary training and awareness for facility staff.

(C) Evaluation of alternatives to the use of any mercury-containing equipment or materials.

(D) Other specific activities designed to reduce or eliminate mercury loadings.

(E) An identification of the facility's responsibilities under P.L.225-2001 (also known as House Enrolled Act 1901 of the 2001 legislative session).

(4) For each activity specified in subdivision (3), the plan must contain the following:

(A) The goal to be accomplished.

(B) A measure of performance.

(C) A schedule for action.

(5) All available mercury monitoring data and any information on mercury in biosolids, if required by an NPDES permit or land application permit, for the two (2) year period preceding the SMV application.

(6) Identification of the resources and staff necessary to implement the PMPP.

(7) Proof of completion of public notice activities required under this section.

(8) Annual reports according to a schedule in the PMPP. Each annual report must describe the following:

(A) The facility's progress toward fulfilling each of the requirements of the PMPP.

(B) The results of mercury monitoring.

(C) The steps taken to implement each planned activity developed under this subsection and subsection (b) to reduce or eliminate mercury from the facility's water.

(b) In addition to subsection (a), a PMPP for a POTW must include the following:

(1) Results of a preliminary evaluation of possible mercury sources in the facility's influent and a plan and schedule for providing the department results of a complete evaluation. The evaluation shall include, at a minimum, the following:

(A) Medical facilities, for example, the following:

(i) Hospitals.

(ii) Clinics.

(iii) Nursing homes.

(iv) Veterinary facilities.

(B) Dental clinics.

(C) Public and private educational laboratories.

(D) General industry and all SIUs.

(E) Significant sources of residential and retail contributions of mercury, for example, the following:

(i) Heating, ventilation, and air conditioning contractors.

(ii) Automobile and appliance repair.

(iii) Veterinarians.

(iv) Others specific to the community served.

(F) An identification of the responsibilities under P.L.225-2001 (also known as House Enrolled Act 1901 of the 2001 legislative session) for the significant industrial users for the POTW.

(2) A list of planned activities designed to reduce or eliminate mercury loadings from the sources identified in subdivision (1).

(3) For each activity specified in subdivision (2), the plan must contain the following:

(A) The goal to be accomplished.

(B) A measure of performance.

(C) A schedule for action.

(4) In addition to activities required under subsection (a)(3), activities must also include an education program for the facility employees and the public within the service area of the facility.

(c) Prior to submitting the PMPP to the department as part of the SMV application, an applicant shall do the following:

(1) Publish notice of the availability of the draft PMPP in a daily or weekly newspaper of general circulation throughout the area affected by the discharge.

(2) Post a copy of the information required by this section at the following:

(A) Principal office of the municipality or political subdivision affected by the facility or discharge.

(B) The United States post office.

(C) If one is available, the library serving those premises.

(d) All notices published under this section shall contain the following information:

(1) The name and address of the applicant that prepared the PMPP.

(2) A general description of the elements of the PMPP.

(3) A brief description of the activities or operations that result in the discharge for which an SMV is being requested.

(4) A brief description of the purpose of this notice and the comment procedures.

(5) The name of a contact person, a mailing address, an internet address, if available, and a telephone number where interested persons may obtain additional information and a copy of the PMPP.

(e) The applicant shall do the following:

(1) Provide a minimum comment period of thirty (30) days.

(2) Include a copy of the comments received and the applicant's responses to those comments in the SMV application submitted to the department.

(f) The department shall consider a PMPP to be complete if it meets the requirements of this section. *(Water Pollution Control Board; 327 IAC 5-3.5-9; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2351)*

327 IAC 5-3.5-10 Transitional mercury effluent limitation

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3

Affected: IC 4-21.5-3; IC 13-14-1-9; IC 13-18-4

Sec. 10. (a) Either at the time a discharging facility applies for or when it receives a renewal of an NPDES permit with a previously established mercury limit from a prior NPDES permit for which a compliance schedule for mercury is not established in the renewed permit and the discharging facility has not had a prior SMV, then the following may be done to assure compliance with the renewed permit:

(1) In a written document to the department, the discharging facility should:

(A) indicate that the discharging facility is planning to apply for an SMV in accordance with this rule; and

(B) provide information to establish a transitional limit consistent with section 8 of this rule.

(2) The department may issue a transitional limit for the discharging facility through a permit modification or an order under IC 13-14-1-9 until the SMV is either approved or denied.

(b) If an SMV is denied, a discharger may request an individual variance, notwithstanding the time limitations set in 327 IAC 5-3-4.1, by doing the following:

(1) Requesting the commissioner's consideration and written determination on a request for a mercury variance from a water quality standard as provided in 327 IAC 2-1-8.8 or 327 IAC 2-1.5-17.

(2) Applying for the mercury variance up to ninety (90) days after the denial of the SMV so long as all other requirements in 327 IAC 5-3-4.1 are met. The applicant may petition the commissioner for up to an additional ninety (90) day period to submit the application.

(Water Pollution Control Board; 327 IAC 5-3.5-10; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2352)

LSA Document #03-130(F)
Proposed Rule Published: November 1, 2004; 28 IR 644
Hearing Held: January 12, 2005
Approved by Attorney General: March 21, 2005
Approved by Governor: April 5, 2005
Filed with Secretary of State: April 6, 2005, 4:00 p.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

LSA Document #04-158(F)

DIGEST

Adds 345 IAC 6-2 to establish procedures for importing horses from contagious equine metritis (CEM) regions to approved CEM quarantine facilities including quarantine and testing procedures. Effective 30 days after filing with the secretary of state.

345 IAC 6-2

SECTION 1. 345 IAC 6-2 IS ADDED TO READ AS FOLLOWS:

Rule 2. Contagious Equine Metritis (CEM)

345 IAC 6-2-1 Definitions and general provisions
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-3-18

Sec. 1. The definitions in IC 15-2.1-2 and the following definitions apply throughout this rule:

(1) "Accredited" means accredited by the United States Department of Agriculture under 9 CFR Subchapter J.

(2) "Approved CEM quarantine facility" means a facility that is approved by the state veterinarian under section 3 of this rule.

(3) "CEM" means the disease contagious equine metritis.

(4) "Owner" means the owner of an animal or his or her authorized agent.

(5) "Quarantine" means restricting, including prohibiting, the movement and housing of animals.

(6) "USDA" means the United States Department of Agriculture.

(Indiana State Board of Animal Health; 345 IAC 6-2-1; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2353)

345 IAC 6-2-2 Incorporation by reference
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-3-18

Sec. 2. The following USDA regulations, in effect on January 1, 2004, are incorporated by reference into this rule:

(1) 9 CFR 93.301(c).

(2) 9 CFR 93.301(d).

(3) 9 CFR 93.301(e).

(4) 9 CFR 93.301(f).

(Indiana State Board of Animal Health; 345 IAC 6-2-2; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2353)

345 IAC 6-2-3 CEM quarantine facility
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-3-18

Sec. 3. (a) The state veterinarian may enter into agreements with the United States Department of Agriculture to qualify the state for USDA approval under 9 CFR 93.301 to receive stallions or mares over seven hundred thirty-one (731) days of age imported from a CEM-affected region.

(b) If the state is approved by the USDA under subsection (a), a person may apply to the board for approval to operate a CEM quarantine facility in the state. A person that wants to operate a CEM quarantine facility in the state shall submit a complete and accurate application for CEM quarantine facility approval to the state veterinarian prior to receiving any animals under section 4 of this rule.

(c) The state veterinarian shall evaluate each request for CEM quarantine facility approval and approve the facility if the requirements in section 5 of this rule are met.

(d) Approval of a CEM quarantine facility shall be for a period of two (2) years and then the approval will expire. A person may reapply for CEM quarantine facility approval.

(e) The state veterinarian may suspend or revoke a CEM quarantine facility approval under any of the following circumstances:

(1) State or federal officials are unable to provide the personnel or other resources necessary to quarantine animals, monitor the CEM quarantine facility, and meet the requirements in this rule.

(2) The CEM quarantine facility presents a health hazard to animals or humans.

(3) The operator violates a provision of IC 15-2.1, a provision of this rule, or a condition of approval of the facility.

(4) The approval of USDA described in subsection (a) is:

(A) suspended;

(B) revoked;

(C) withdrawn;

(D) relinquished; or

(E) otherwise nullified.

A suspension or revocation may be for all or part of the approval. *(Indiana State Board of Animal Health; 345 IAC 6-2-3; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2353)*

345 IAC 6-2-4 Movement into the state restricted
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-3-18

Sec. 4. (a) A person may move into the state to a CEM quarantine facility a horse imported from a region where CEM exists or a region that trades horses freely with a region in which CEM exists as listed in 9 CFR 93.301(c)(1) only if the following requirements are met:

(1) The person receives a preentry permit for entry into the state from the state veterinarian. The state veterinarian shall approve a permit for entry into the state if the applicable requirements in IC 15-2.1, 345 IAC 1-3, and this rule are met. The state veterinarian may refuse to approve a permit for entry into the state to a CEM quarantine facility if state or federal resources are limited in a manner that the state veterinarian or federal officials would be unable to complete the requirements of this rule.

(2) Each animal is accompanied by a certificate of veterinary inspection as required under 345 IAC 1-3.

(3) The animal is identified with official identification as defined in 345 IAC 1-3-3.

(4) The animal meets any testing, vaccination, or other applicable requirements in 345 IAC 1-3.

(5) The animal meets the requirements in 9 CFR 93.301(d).

(b) Animals moving into the state under a permit issued under this section must move directly to an approved CEM quarantine facility without stopping and unloading elsewhere in the state.

(c) Horses exempt from CEM import restrictions as described in 9 CFR 93.301(c)(2) and 9 CFR 93.301(g) are exempt from the movement restrictions in this section.

(d) Horses that are imported for no more than ninety (90) days to compete in specified events may be moved into the state if the conditions in 9 CFR 93.301(f) and subsection (a) are met. *(Indiana State Board of Animal Health; 345 IAC 6-2-4; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2353)*

345 IAC 6-2-5 Approved CEM quarantine facility
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-3-18

Sec. 5. (a) A person desiring to accept horses moved into the state under section 4 of this rule must submit a written request to the state veterinarian for approval of their facility as a CEM quarantine facility prior to moving any horses to the facility. A person may not accept any horses moved into the state under section 4 of this rule until such time as the receiving facility is approved as a CEM quarantine facility under this rule.

(b) The state veterinarian may approve a facility as a CEM quarantine facility if the following requirements are met:
(1) The facility is sufficient to keep quarantined horses separate from other horses.
(2) The facility operator has procured the services of a licensed and accredited veterinarian to perform the procedures required by this rule. The state veterinarian may require a written acknowledgement by the veterinarian that they are willing and able to perform the required procedures.
(3) The applicable provisions of this rule have been met.

(c) The state veterinarian may prescribe items necessary to protect animals from disease and facilitate operation of the CEM quarantine facility that are conditions of CEM quarantine facility approval, including the following:
(1) Training that is required for the CEM quarantine facility owner and agents.
(2) Training that is required for the veterinarian for the facility.
(3) Limitations on the days or times that state or federal officials will be available to perform official functions under this rule.
(4) Designation of the laboratory or laboratories that must be used for testing.
(5) Limitations on the sex of animals permitted at the facility.

(d) The operator of a CEM quarantine facility shall provide state and federal officials access to the facility and any animals in the facility upon request so that compliance with this rule may be achieved and verified.

(e) The state veterinarian may consult with the USDA on approving laboratories to conduct CEM cultures and tests under 9 CFR 93.301(i). *(Indiana State Board of Animal Health; 345 IAC 6-2-5; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2354)*

345 IAC 6-2-6 CEM quarantine facility procedures
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-3-18

Sec. 6. (a) The state veterinarian shall quarantine a horse moved into the state under this rule to an approved CEM quarantine facility until such time as the applicable requirements in this section are completed.

(b) The state veterinarian shall quarantine any mare that is used to test stallions for CEM until the mares are eligible for release from quarantine under 9 CFR 93.301(e)(4).

(c) The operator of a CEM quarantine facility shall keep quarantined animals separate from all other equine.

(d) The owner of a horse moved into the state under this rule must procure the services of a veterinarian to complete the following procedures:
(1) Stallions shall be treated in accordance with 9 CFR 93.301(e)(3).
(2) Mares shall be treated in accordance with 9 CFR 93.301(e)(5).

(e) Mares used to test stallions shall be handled and treated in accordance with 9 CFR 93.301(e)(4). *(Indiana State Board of Animal Health; 345 IAC 6-2-6; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2354)*

LSA Document #04-158(F)
Notice of Intent Published: July 1, 2004; 27 IR 3098
Proposed Rule Published: December 1, 2004; 28 IR 1000
Hearing Held: January 20, 2005
Approved by Attorney General: March 7, 2005
Approved by Governor: April 5, 2005
Filed with Secretary of State: April 6, 2005, 4:00 p.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: 9 CFR 93.301(c) through 9 CFR 93.301(f), January 1, 2004 Edition

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #04-161(F)

DIGEST

Amends 410 IAC 21-3-8 and 410 IAC 21-3-9 to remove birth

weight less than 2,500 grams and stillbirth as reportable conditions, require reporting of both pervasive developmental disorders and fetal alcohol spectrum disorder that is recognized in a child before five years of age, and amend the maximum age of a child whose diagnosis must be reported to the registry and whose report must be included in the registry from two years to three years. Repeals 410 IAC 21-3-6. Effective 30 days after filing with the secretary of state.

410 IAC 21-3-6
410 IAC 21-3-8
410 IAC 21-3-9

SECTION 1. 410 IAC 21-3-8 IS AMENDED TO READ AS FOLLOWS:

410 IAC 21-3-8 Reporting requirements
Authority: IC 16-38-4-7
Affected: IC 16-38-4

Sec. 8. (a) The following shall be reported by a person who must report as required by section 7 of this rule to the registry:

(1) Every birth problem, **except a pervasive developmental disorder or a fetal alcohol spectrum disorder,** listed in section 9 of this rule that:

(A) has been diagnosed in a child before that child's ~~second~~ **third** birthday; **or**

~~(2) Every birth problem listed in section 9 of this rule that~~ **(B)** was diagnosed at the time of a child's death up to ~~two (2)~~ **three (3)** years of age. ~~or at expulsion or extraction of a fetus after twenty (20) weeks of gestation.~~

(2) A pervasive developmental disorder or a fetal alcohol spectrum disorder listed in section 9 of this rule that was diagnosed before a child's fifth birthday.

(b) Reports to the registry must be made within sixty (60) days of diagnosis.

(c) Only diagnoses of birth problems in children who are Indiana residents shall be reported.

(d) The registry shall provide the required forms for birth problems reporting. *(Indiana State Department of Health; 410 IAC 21-3-8; filed Jul 8, 2002, 1:55 p.m.: 25 IR 3758; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2355)*

SECTION 2. 410 IAC 21-3-9 IS AMENDED TO READ AS FOLLOWS:

410 IAC 21-3-9 Reportable birth problems
Authority: IC 16-38-4-7
Affected: IC 16-38-4

Sec. 9. The following categories along with those conditions identified in the International Classification of Diseases – Ninth Revision, Clinical Modification, 1998 (ICD-9-CM) are birth problems:

(1) A structural deformation.

(2) A developmental malformation.

(3) A genetic, inherited, or biochemical disease.

~~(4) Birth weight less than two thousand five hundred (2,500) grams.~~

~~(5)~~ **(4)** A condition of a chronic nature, including central nervous system hemorrhage or infection of the central nervous system, that may result in a need for long term health care.

~~(6) Stillbirth.~~

(5) A pervasive developmental disorder.

(6) A fetal alcohol spectrum disorder.

(7) Any other severe disability that is recognized in a child after birth and before the child becomes ~~two (2)~~ **three (3)** years of age.

(8)

ICD-9-CM Codes	Name
155-208	Neoplasms
216-216.9	Neoplasms
230-234	Neoplasms
246.1	Dyshormonogenic goiter
250	Diabetes mellitus
257.8	Other testicular dysfunction
279	Disorders involving the immune mechanism
282	Hereditary hemolytic anemias
284.0	Constitutional aplastic anemia
286.0-286.5	Coagulation defects
287.3	Primary thrombocytopenia
288	Diseases of white blood cells
289.6	Familial polycythemia
299.00-299.99	**Pervasive developmental disorders including autism, childhood disintegrative disorder, Asperger's syndrome, Rett syndrome, and pervasive developmental disorders not otherwise specified**
330	Cerebral degenerations usually manifest childhood
335	Anterior horn cell disease
359	Muscular dystrophies and myopathies
362.21	Retrolental fibroplasia
362.7	Hereditary retinal dystrophies
365.14	Glaucoma of childhood
378	Strabismus and other disorders of binocular eye movement
379.51	Congenital nystagmus
524.0-524.1	Anomalies of jaw
	Congenital anomalies
740-742	Central nervous system
743-744	Orofacial
745-747	Cardiovascular
748	Respiratory
749-750.29	Orofacial
750.3-751	Gastrointestinal
752-753	Genitourinary

754-756	Musculoskeletal
757	Integument
758	Chromosome and syndromes
759	Other and unspecified congenital anomalies
760.71	**Fetal alcohol syndrome**

(Indiana State Department of Health; 410 IAC 21-3-9; filed Jul 8, 2002, 1:55 p.m.: 25 IR 3758; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2355)

SECTION 3. 410 IAC 21-3-6 IS REPEALED.

LSA Document #04-161(F)
Notice of Intent Published: July 1, 2004; 27 IR 3099
Proposed Rule Published: November 1, 2004; 28 IR 655
Hearing Held: November 22, 2004
Approved by Attorney General: March 3, 2005
Approved by Governor: March 30, 2005
Filed with Secretary of State: March 30, 2005, 3:00 p.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

TITLE 440 DIVISION OF MENTAL HEALTH AND ADDICTION

LSA Document #04-229(F)

DIGEST

Amends 440 IAC 7.5 to make clearer the intent of the residential rule, to make it consistent throughout, to repeal the $520 limit on the residential living allowance, and to update references to the 2000 edition of the Life Safety Code. Effective 30 days after filing with the secretary of state.

440 IAC 7.5-1-1	**440 IAC 7.5-5-1**
440 IAC 7.5-2-1	**440 IAC 7.5-8-1**
440 IAC 7.5-2-8	**440 IAC 7.5-8-2**
440 IAC 7.5-2-12	**440 IAC 7.5-8-3**
440 IAC 7.5-2-13	**440 IAC 7.5-9-1**
440 IAC 7.5-3-3	**440 IAC 7.5-9-2**
440 IAC 7.5-3-4	**440 IAC 7.5-9-3**
440 IAC 7.5-3-7	**440 IAC 7.5-10-1**
440 IAC 7.5-4-4	**440 IAC 7.5-10-2**
440 IAC 7.5-4-7	**440 IAC 7.5-10-3**
440 IAC 7.5-4-8	**440 IAC 7.5-11**

SECTION 1. 440 IAC 7.5-1-1 IS AMENDED TO READ AS FOLLOWS:

440 IAC 7.5-1-1 Definitions

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-7-2-40.6; IC 12-17.4; IC 12-21-2-7; IC 12-22-2-3; IC 12-23-17; IC 12-24-12-2; IC 12-24-12-10; IC 12-24-19-2; IC 12-26; IC 16-36-1; IC 23-17; IC 30-5-5-16; 42 U.S.C. 300x-2(c)

Sec. 1. The following definitions apply throughout this article:

(1) "Addiction" means alcoholism or addiction to:
(A) narcotic or other drugs; or ~~addiction~~ ~~to~~
(B) gambling.

(2) "Addiction services provider" means an organization certified by the division to provide a structured facility designed for the:
(A) treatment;
(B) care; and
(C) rehabilitation;
of individuals addicted to alcohol or drugs.

(3) "Agency" means:
(A) a community mental health center certified by the division under 440 IAC 4.1;
(B) a managed care provider certified by the division under 440 IAC 4.3;
(C) a residential care provider certified by the division under 440 IAC 6; or
(D) an addiction services provider with regular certification certified by the division under 440 IAC 4.4-2-3 that administers a residential living facility.

(4) "Alternative family for adults **(AFA)** program" means a program that serves six (6) or fewer individuals who:
(A) have a psychiatric disorder or addiction, or both; and ~~who~~
(B) reside with an unrelated householder.

(5) "Apartment ~~house~~ **building"** means any building or portion thereof that contains three (3) or more dwelling units and includes condominiums.

(6) "Case management" means goal oriented activities that locate, facilitate, provide access to, coordinate, or monitor the full range of basic human needs, treatment, and service resources for individual consumers. The term includes, where necessary and appropriate for the consumer, the following:
(A) Assessment of the consumer.
(B) Treatment planning.
(C) Crisis assistance.
(D) Providing access to and training the consumers to utilize basic community resources.
(E) Assistance in daily living.
(F) Assistance for the consumer to obtain services necessary for meeting basic human needs.
(G) Monitoring of the overall delivery of services.
(H) Assistance in obtaining the following:
(i) Rehabilitation services and vocational opportunities.
(ii) Respite care.
(iii) Transportation.
(iv) Education services.
(v) Health supplies and prescriptions.

(7) "Case manager" means an individual who provides case management activities.

(8) "Community mental health center" **or "CMHC"** means a mental health facility that the division has certified as fulfilling the statutory and regulatory requirements to be a community mental health center.

(9) "Congregate ~~living facility"~~ **residence"** means a ~~supervised group living facility, a sub-acute living facility, a transitional living facility, or a semi-independent~~ **residential** living facility ~~for up to fifteen (15) individuals~~ that is located in any building or portion thereof that contains facilities for living, sleeping, and sanitation, and includes facilities for eating and cooking, for occupancy by other than a family.

(10) "Consumer" ~~is~~ **means** an individual with a psychiatric disorder or addiction, or both.

(11) "Continuum of care" means a range of required services provided by a community mental health center or a managed care provider. The term includes the following:

(A) Individualized treatment planning to increase consumer coping skills and symptom management, which may include any combination of services listed under this section.

(B) Twenty-four (24) hour a day crisis intervention.

(C) Case management to fulfill individual consumer needs, including assertive case management when indicated.

(D) Outpatient services, including the following:

(i) Intensive outpatient services.

(ii) Substance abuse services.

(iii) Counseling.

(iv) Treatment.

(E) Acute stabilization services, including detoxification services.

(F) Residential services.

(G) Day treatment.

(H) Family support services.

(I) Medication evaluation and monitoring.

(J) Services to prevent unnecessary and inappropriate treatment and hospitalization and the deprivation of a person's liberty.

(12) "Crisis intervention" means services in response to a psychiatric disorder or addiction emergency, either provided directly by the provider or made available by arrangement with a medical facility or an individual physician licensed under Indiana law.

(13) "Division" means the Indiana division of mental health and addiction or its duly authorized agent.

(14) "Dwelling unit" means ~~any building or portion thereof that contains~~ **a single unit providing complete, independent** living facilities **for one (1) or more persons,** including **permanent** provisions for:

(A) living;

(B) sleeping;

(C) eating;

(D) cooking; and

(E) sanitation. ~~for not more than one (1) family.~~

(15) "Evacuation capability" means the ability of the occupants, residents, and staff, as a group, to evacuate the building. Evacuation capability is classified as follows:

(A) Prompt evacuation capability is equivalent to the capability of the general population when applying the requirements of this article.

(B) Slow evacuation is the capability of the group to evacuate the building in a timely manner, with some of the residents requiring assistance from the staff.

(C) Impractical evacuation capability occurs when the group, even with staff assistance, cannot reliably evacuate the building in a timely manner.

The evacuation capability of the residents and staff is a function of both the ability of the residents to evacuate and the assistance provided by the staff. Evacuation capability in all cases is based on the time of day or night when evacuation would be most difficult, that is, sleeping residents, loss of power, severe weather, or fewer staff present.

(16) "Family" means an individual or two (2) or more persons related by blood or marriage or a group of ten (10) or ~~less~~ **fewer** persons who need not be related by blood or marriage living together in a single dwelling unit.

(17) "Gatekeeper" means an agency identified in IC 12-24-12-2 or IC 12-24-12-10 that is actively involved in the evaluation and planning of treatment for an individual committed to a state institution beginning after the commitment through the planning of the individual's transition back into the community, including case management services for the individual in the community.

(18) "Householder" means the occupant owner or leaseholder of the residence used in the alternative family program.

~~(18)~~ **(19)** "Household member" means any person living in the same physical residence as a consumer living in a residential living facility licensed or certified under this rule.

~~(19) "Householder" means the occupant owner or leaseholder of the residence used in the alternative family program.~~

(20) "Individualized treatment plan" means a written plan of care and intervention developed for an individual by a treatment team in collaboration with the individual and, when appropriate, the individual's family or guardian.

(21) "Legal representative" means:

(A) a health care representative appointed under IC 16-36-1;

(B) an attorney-in-fact for health care who was appointed by the resident when the resident was competent under IC 30-5-5-16;

(C) a court appointed guardian for health care decisions; or

(D) the resident's parent, adult sibling, adult child, or spouse who is acting as the resident's health care representative under IC 16-36-1 when:

(i) no formal appointment of a health care representative has been made; and

(ii) the resident is unable to make health care decisions.

(22) "Managed care provider" **or "MCP"** means an organization:

(A) that:

(i) for mental health services, is defined under 42 U.S.C. 300x-2(c);

(ii) provides addiction services; or

(iii) provides children's mental health services;

(B) that has entered into a provider agreement with the division under IC 12-21-2-7 to provide a continuum of care as defined in IC 12-7-2-40.6 in the least restrictive, most appropriate setting; and

(C) that is operated by at least one (1) of the following:
(i) A city, town, county, or other political subdivision of Indiana.
(ii) An agency of Indiana or of the United States.
(iii) A political subdivision of another state.
(iv) A hospital owned or operated by:
(AA) a unit of government; or
(BB) a building authority that is organized for the purpose of constructing facilities to be leased to units of government.
(v) A corporation incorporated under IC 23-7-1.1 (before its repeal August 1, 1991) or IC 23-17.
(vi) An organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.
(vii) A university or college.

(23) "Psychiatric disorder" means a mental disorder or disease. The term does not include the following:
(A) Mental retardation.
(B) A developmental disability.
(C) Alcoholism.
(D) Addiction to narcotic or other drugs.
(E) Addiction to gambling.

(24) "Representative payee" means a person appointed by **the United States:**
(A) ~~the United States~~ Social Security Administration;
(B) ~~the United States~~ Office of Personnel Management;
(C) ~~the United States~~ Department of Veterans Affairs; or
(D) ~~the United States~~ Railroad Retirement Board;
to provide one (1) or more financial management services in order to assist an individual who is receiving government benefits and is medically incapable of making responsible financial decisions.

(25) "Resident" means an individual who is living in a residential living facility.

~~(26) "Resident living allowance" is a sum of money paid to a consumer when that consumer's personal resources are not adequate to maintain the consumer in a therapeutic living environment.~~

~~(27)~~ **(26)** "Residential care provider" **or "RCP"** means a provider of residential care that has been certified by the division as one (1) of the following:
(A) A community mental health center.
(B) A managed care provider.
(C) A residential care provider.
(D) An addiction services provider with regular certification.

~~(28)~~ **(27)** "Residential director" means an individual whose primary responsibility is to administer and operate the residential facility.

~~(29)~~ **(28)** "Residential living facility" means:
(A) **a** sub-acute stabilization facility;
(B) **a** supervised group living facility;
(C) **a** transitional residential services facility;
(D) **a** semi-independent living facility defined under IC 12-22-2-3; and
(E) alternative family homes operated solely by resident householders under this rule.

~~(30)~~ **(29)** "Residential staff" or "staff" means all individuals who the agency employs or with whom the agency contracts to provide direct services to the residents in the residential living facility.

(30) "Resident living allowance" is a sum of money paid to a consumer when that consumer's personal resources are not adequate to maintain the consumer in a therapeutic living environment.

(31) "Respite care" means temporary residential care to provide:
(A) relief for a caregiver; or
(B) transition during a stressful situation.

(32) "Semi-independent living facility" **or "SILP"** means a facility:
(A) that is not licensed by another state agency and serves six (6) or fewer individuals with a psychiatric disorder or an addiction, or both, per residence who require only limited supervision; and
(B) in which the agency or its subcontractor:
(i) provides a resident living allowance to the resident; or
(ii) owns, leases, or manages the residence.

(33) "Sub-acute stabilization facility" **or "SUB ACUTE"** means a twenty-four (24) hour facility for the treatment of psychiatric disorders or addictions, and ~~which~~ **that** is more restrictive than a supervised group living facility and less restrictive than an inpatient facility.

(34) "Supervised group living facility" **or "SGL"** means a residential facility that provides a therapeutic environment in a home-like setting to persons with a psychiatric disorder or addiction who need the benefits of a group living arrangement as post-psychiatric hospitalization intervention or as an alternative to hospitalization.

(35) "Therapeutic living environment" means a living environment:
(A) in which the staff and other residents contribute; ~~to the habilitation and rehabilitation of the resident;~~ and
(B) that presents no physical or social impediments;
to the habilitation and rehabilitation of the resident.

(36) "Transitional residential facility" **or "TRS"** means a twenty-four (24) hour per day service that provides food, shelter, and other support services to individuals with a psychiatric disorder or addiction who are in need of a short term supportive residential environment.

(37) "Treatment team" minimally consists of the following:
(A) The resident.
(B) The resident's case manager.
(C) The appropriate staff of the residential facility.
(D) Persons from other agencies who design and provide a direct treatment service for the resident.
(E) If the resident has a legal representative, the team shall include the legal representative.

(Division of Mental Health and Addiction; 440 IAC 7.5-1-1;

filed Jun 10, 2002, 2:25 p.m.: 25 IR 3127; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2356)

SECTION 2. 440 IAC 7.5-2-1 IS AMENDED TO READ AS FOLLOWS:

440 IAC 7.5-2-1 General overview

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-7-2-70; IC 12-17.4-3; IC 12-20-17-2; IC 12-22-2-3; IC 12-22-2-11; IC 12-30-3; IC 16-28

Sec. 1. The following is a general overview of the requirements for residential facilities under this article:

CMHCs and MCPs ONLY			ALL AGENCIES		
ISSUE	SILP	AFA	TRS	SGL	SUB-ACUTE
Covers/affects	MCP/CMHC	MCP/CMHC	All	All	All
~~Licensed/cert.~~ **Licensed/certified** by	Agency	Agency	Agency	DMH	DMH
Certification time	24 months	24 months	24 ~~mos.~~ **months**	3 years	3 years
Site accredited	No	No	15/less No–16+ Yes	Yes	Yes
Beds	Maximum 6 Per residence	~~Max.~~ **Maximum** 6 per householder	~~Max.~~ **Maximum** 15 (can be waived)	10 single family 15 ~~apt./congregate~~ **apartment/ congregate**	Minimum 4 Maximum 15 (can be waived)
Locked egress allowed	No	No	No	No	Yes*
Floor plan	No	No	No	Yes	Yes
Space per consumer	80' single 60' multiple	80' single 60' multiple/2	80' single 60' multiple	80' single 60' multiple	80' single 60' multiple
Children of ~~residents~~ **resident** allowed?	Yes	Yes	Yes	Yes	No
Plumbing	4 per toilet 6 per tub/shower	4 per toilet 6 per tub/shower	4 per toilet 6 per tub/shower	4 per toilet 6 per tub/shower	4 per toilet 6 per tub/shower
Setting–House	Yes	Yes	Yes	Yes	Yes
Apartment	Yes	Yes	Yes	Yes	No
Congregate	~~Yes~~ **No**	No	Yes	Yes	Yes
Mobile home	No unless waiver	No unless waiver	No	No	No
Fire/safety inspections by	Local	Local, 4+, SFM	15/less Local with waiver, 16+ SFM	State fire marshal	State fire marshal
PROGRAM					
Minimum oversight	1 hour per week	2 hours per month	Less than 24 hours	24 hours	24 hours
Residential living allowance allowed	Yes	Yes	Yes	Yes	No
Length of stay limit	No	No	No	No	Up to 1 year
Medication rules	Yes	Yes	Yes	Yes	Yes
TB test–resident	Yes	Yes	Yes	Yes	Yes
Seclusion	No	No	No	No	Yes
Restraint–Chemical	No	No	No	No	No
Physical	No	No	No	No	Yes

***Applies only to sub-acute stabilization facilities that meet the fire prevention and building safety commission requirements for an I-3 occupancy as adopted by reference under 675 IAC 13-2.4-1(a).**

Applies to both seriously mentally ill adults and persons with chronic addiction. *(Division of Mental Health and Addiction; 440 IAC 7.5-2-1; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3129; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2359)*

SECTION 3. 440 IAC 7.5-2-8 IS AMENDED TO READ AS FOLLOWS:

440 IAC 7.5-2-8 Resident health and treatment

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-22-2

Sec. 8. (a) An individualized treatment plan shall be developed and followed for each resident **as follows:**

(1) The treatment team, with the active participation of the resident, shall design and implement a written, comprehensive individualized treatment plan in collaboration with the case

manager and under the direction of the agency **as follows:**

(A) A preliminary plan or a referral application indicating the desired treatment objectives must be completed ~~prior to~~ **before** placement.

(B) A fully developed individual treatment plan shall be completed within the first thirty (30) days of enrollment.

(2) The individual treatment plan shall be reviewed at least every ninety (90) days.

(b) Each person admitted to a residential facility shall have written evidence of the following:

(1) The resident has had a physical examination:

(A) not more than six (6) months ~~prior to~~ **before** admission; or

(B) within three (3) months after admission.

(2) A tuberculin skin test shall be completed and read within three (3) months ~~prior to~~ **before** admission. If the individual has not had the tuberculin skin test within three (3) months ~~prior to~~ **before** admission, the person may be admitted to the facility, but must have the test upon admission and it must be read within seventy-two (72) hours after the administration of the test.

(c) The agency must assist the resident to obtain medical and dental care **as follows:**

(1) The facility shall have a written plan that outlines the procedures used to access and treat:

(A) dental;

(B) pharmacological;

(C) optometric; ~~audiological;~~

(D) auditory;

(E) psychiatric; and

(F) general medical;

care needs of residents, including at least an annual physical and dental exam.

(2) The plan shall include the following:

(A) Procedures for evaluating the resident's needs.

(B) Referral to appropriate health care providers, including choice of private practitioners.

(C) Assistance in obtaining insurance or other aid for the payment of fees for medical and dental services.

(D) Methods of training each resident to monitor the resident's own personal health, hygiene, and dental conditions.

(d) The agency shall have a written plan outlining procedures in cases of emergency or illness of staff, residents, or household member.

(e) Each resident shall be instructed in how to access physical emergency services and the agency's clinical emergency services. *(Division of Mental Health and Addiction; 440 IAC 7.5-2-8; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3133; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2359)*

SECTION 4. 440 IAC 7.5-2-12 IS AMENDED TO READ AS FOLLOWS:

440 IAC 7.5-2-12 Physical requirements

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-22-2-3

Sec. 12. (a) The living area shall meet the following requirements:

(1) The residence must be in good repair and free of hazards, such as the following:

(A) Loose or broken window glass.

(B) Loose or cracked floor coverings or ceilings.

(C) Holes in the walls.

(2) The residence must be kept free from flying insects by screens on all functional outside windows and doors or by other effective means.

(3) The resident's bedroom shall have at least one (1) window capable of being fully opened for escape and rescue purposes and proper ventilation **unless it is part of a sub-acute facility that meets the fire prevention and building safety commission requirements for an I-3 occupancy as adopted by reference under 675 IAC 13-2.4-1(a).**

(b) The residence shall be clean, neat and orderly. The agency or its subcontractor shall ensure that the resident maintains cleanliness of the residence.

(c) The agency or its subcontractor shall provide for the comfort and safety of all occupants.

(d) All rooms used for eating, sleeping, and living shall be provided with adequate light and ventilation by means of windows as needed for safety purposes.

(e) The following shall not be used as a residence unless the division grants a waiver:

(1) Basement rooms or rooms below grade level.

(2) Attics and other areas originally intended for storage.

(3) Sleeping rooms in resident hotels or motels.

(f) The division shall not grant a waiver unless the:

(1) illumination;

(2) ventilation;

(3) temperature; and

(4) humidity control;

provide the same level of comfort as rooms not requiring a waiver, and if the room is below grade, or an attic or other area originally intended for storage, at least one (1) direct exit to the outside must be provided.

(g) Bedrooms shall not be located in such a manner as to require the passage of a resident through the bedroom of another resident.

(h) A single occupancy bedroom for an adult must have eighty (80) square feet or more of floor space.

(i) A multiple occupancy bedroom must have sixty (60) square feet or more of floor space for each adult occupant.

(j) There must be at least one (1) toilet and lavatory for every four (4) residents and one (1) tub or shower for every six (6) residents.

(k) The per person requirements of square footage and bathroom facilities do not apply to the following:

(1) A consumer with his or her children living with him or her in the facility.

(2) A sub-acute facility or a transitional residential facility that was given a waiver regarding the maximum number of residents prior to January 1, 2002, and is accredited by an accrediting agency approved by the division. This waiver is not transferable.

(l) Ceiling heights in bedrooms shall be a minimum of seven (7) feet, six (6) inches. If the bedroom has a suspended or sloping ceiling, the specified ceiling heights must be met in all areas used in computation of floor space.

(m) If a private water supply or sewage system is used, the residence shall comply with local regulations regarding sanitation. Evidence of compliance shall be provided by the landlord to the agency or, if the residence is a sub-acute facility or a supervised group living facility, to the division.

(n) There shall be cooking facilities and food storage areas.

(o) The food preparation and serving areas, including the structure, construction, and installation of equipment, shall be in sanitary condition and operating properly. Food storage areas shall be properly refrigerated and protected from contamination. Storage areas for nonfood supplies shall be separate from food storage areas. Appliances, fixtures, and equipment shall be adequate for sanitary washing and drying of dishes.

(p) The facility shall ensure that arrangements are made to allow residents to launder personal items and linens at least weekly. If laundry is done on the premises, equipment must be kept in working order. *(Division of Mental Health and Addiction; 440 IAC 7.5-2-12; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3134; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2360)*

SECTION 5. 440 IAC 7.5-2-13 IS AMENDED TO READ AS FOLLOWS:

440 IAC 7.5-2-13 Safety requirements

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-22-2

Sec. 13. (a) The agency shall have written policies and procedures to ensure resident and staff safety.

(b) The policies and procedures regarding resident and staff safety must be:

(1) given to all personnel and residents; and ~~bc~~

(2) made available to others on request.

(c) The agency or its subcontractor shall demonstrate that it has provided each resident, householder, and staff member with life safety equipment as follows:

(1) There shall be an Underwriter's Laboratories approved battery-operated smoke detector in good working order on each floor of a residence and in each bedroom unless another type of alarm or detector has been installed by the landlord to comply with a local ordinance.

(2) In the case of the visually impaired resident, the residence shall be equipped with audible life safety devices.

(3) In the case of the hearing impaired resident, the residence shall be equipped with visual life safety devices.

(4) A five (5) pound ABC multipurpose type extinguisher, or the equivalent, shall be located on each floor of the facility.

(5) In a sub-acute facility, a supervised group living facility, or a transitional residential facility, at least one (1) ten (10) pound ABC multipurpose type extinguisher shall be located in the kitchen.

(d) All:

(1) sprinkler systems;
(2) fire hydrants;
(3) standpipe systems;
(4) fire alarm systems;
(5) portable fire extinguishers;
(6) smoke and heat detectors; and
(7) other fire protective or extinguishing systems or appliances;

shall be maintained in an operative condition at all times and shall be replaced or repaired where defective.

(e) Each resident, householder, and staff member shall be trained in procedures to be followed in the event of:

(1) tornado;
(2) fire;
(3) gas leak; and
(4) other threats to life safety.

(f) Use of space heaters and unventilated fuel heaters is prohibited.

(g) Residential living facilities and operations shall conform to all applicable federal, state, or local health and safety codes, including the following:

(1) Fire protection.

(2) Building construction and safety.

(3) Sanitation.

(h) Residential living facilities shall maintain current documentation of compliance with all applicable codes.

(i) Every closet door latch shall be such that it can be opened from the inside in case of emergency.

(j) Every bathroom door shall be designed to permit the opening of the locked door from the outside in an emergency.

(k) **The following are the requirements** for all facilities, except sub-acute facilities ~~no door in the required path of egress shall be locked, latched, chained, bolted, barred, or otherwise rendered unusable.~~

~~(l) A sub-acute facility may be a locked or secure facility, if the facility meets the following requirements:~~

~~(1) All locking devices and other fire safety devices shall comply with the rules of~~ **that meet** the fire prevention and building safety commission **requirements for an I-3 occupancy as adopted by reference under 675 IAC 13-2.4-1(a):**

~~(2)~~ **(1)** Exit doors shall be openable from the inside without the use of a key or any special knowledge or effort.

(2) No door in the required path of egress shall be:

(A) locked;

(B) chained;

(C) bolted;

(D) barred;

(E) latched; or

(F) otherwise rendered unusable.

(3) All locking devices shall be **in compliance with the rules** of ~~a type approved by~~ the fire prevention and building safety commission.

(l) A sub-acute facility meeting the fire prevention and building safety commission requirements for an I-3 occupancy as adopted by reference under 675 IAC 13-2.4-1(a) may be a locked or secure facility.

(m) The administration of the facility shall have a written posted plan for evacuation in case of fire and other emergencies.

(n) For all facilities, except semi-independent living facilities, fire evacuation drills shall be conducted monthly. The shift conducting the drill shall be alternated to include each shift once a quarter. At least one (1) drill each year shall be conducted during sleeping hours. A tornado drill shall be conducted each spring for all staff and residents.

(o) Residents of semi-independent living facilities shall be trained to handle emergency evacuation situations.

(p) Where smoking is permitted, noncombustible safety-type ash trays or receptacles, for example, glass, ceramic, or metal, shall be provided.

(q) All combustible rubbish, oily rags, or waste material, when kept within a building or adjacent to a building, shall be securely stored in metal or metal-lined receptacles equipped with tight-fitting covers or in rooms or vaults constructed of noncombustible materials. Dust and grease shall be removed from hoods above stoves and other equipment at least every six (6) months.

(r) No combustibles shall be stored within three (3) feet of furnaces or water heaters.

(s) The facility shall not use any type of solid fuel-burning appliance, except fireplaces.

(t) Fireplace safety requirements shall be as follows:

(1) If the fireplace is used, the chimney flue shall be cleaned annually and a written record of the cleaning retained.

(2) Glass doors, a noncombustible hearth, and grates shall be provided for each fireplace in use.

(3) Ashes from the fireplace shall be disposed of in a noncombustible covered receptacle. The receptacle shall then be placed on the ground and away from any building or combustibles.

(4) Proper fireplace tools shall be provided for each fireplace in use.

(u) The facility shall maintain all fuel-burning appliances in a safe operating condition. There shall be an annual inspection by a qualified inspector of all fuel-burning appliances.

(v) The gas and electric shutoffs shall be labeled and easily accessible in case of emergency. *(Division of Mental Health and Addiction; 440 IAC 7.5-2-13; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3135; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2361)*

SECTION 6. 440 IAC 7.5-3-3 IS AMENDED TO READ AS FOLLOWS:

440 IAC 7.5-3-3 Resident living allowance

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-22-2-3

Sec. 3. (a) Agencies that contract with the division may choose to provide a resident living allowance.

(b) An agency that provides a resident living allowance shall comply with ~~the following:~~

~~(1) The resident living allowance shall not exceed five hundred twenty dollars ($520) per month, except in the first month in which the resident receives the resident living allowance.~~

~~(2)~~ **this subsection.** A resident is eligible to receive a resident living allowance if **the:**

~~(A) the~~ **(1)** resident's income, less the income incentive, is less than two hundred percent (200%) of the federal poverty guideline;

~~(B) the~~ **(2)** resident has no more than one thousand five hundred dollars ($1,500) in liquid assets;

~~(C) the~~ **(3)** resident's other personal resources are inadequate to maintain the resident in a therapeutic living environment; and

~~(D) the~~ **(4)** allowance is authorized by the individual treatment plan.

(c) The agency may disburse a resident living allowance on behalf of the resident in compliance with requirements of a representative payee. *(Division of Mental Health and Addiction; 440 IAC 7.5-3-3; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3137; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2362)*

SECTION 7. 440 IAC 7.5-3-4 IS AMENDED TO READ AS FOLLOWS:

440 IAC 7.5-3-4 Calculation of resident living allowance
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-22-2-3

Sec. 4. Residents who are eligible to receive a resident living allowance shall have the amount computed by the following method:

(1) Subtract the income incentive from the resident's income and benefits.

(2) Subtract this difference from the resident's allowable expenses. This is the amount of the resident's living allowance, up to the cost of the resident's allowable expenses. ~~or the maximum of five hundred twenty dollars ($520) per month.~~

(Division of Mental Health and Addiction; 440 IAC 7.5-3-4; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3137; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2363)

SECTION 8. 440 IAC 7.5-3-7 IS AMENDED TO READ AS FOLLOWS:

440 IAC 7.5-3-7 Allowable expenses
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-22-2-3

Sec. 7. (a) Allowable expenses for purposes of figuring the resident living allowance include the following:

(1) Rent for the certified residence.

(2) Utilities.

(3) Telephone; long distance charges related to the individual's treatment plan shall be included as an allowable expense.

(4) Household expenses, including the following:

(A) Food.

(B) Meals eaten out.

(C) Household cleaning supplies.

(D) Laundry supplies.

(5) Transportation to and from programs and activities specified in the individual's treatment plan.

(6) Medical insurance for non-Medicaid eligible individuals.

(7) Insurance as required by court order or state statute.

(8) Medical, dental, pharmacological, optometric, and ~~audiological~~ **auditory** expenses that:

(A) are essential to maintain or increase the level of independent functioning of the resident; and

(B) cannot be paid for through:

(i) Medicaid;

(ii) Medicare;

(iii) private health insurance; or

(iv) other resources.

(9) Personal care expenses, including:

(A) clothing;

(B) hair care;

(C) personal hygiene supplies; and

(D) other items that are essential to the resident's participation in the program.

(10) Current psychiatric, rehabilitative, or ~~habilitative~~ **habilitation** services, including residential supervision and case management, specified in the individualized treatment plan.

(11) Startup costs, including residence and utility deposits or purchase of basic furnishings specified in this article.

(12) Court ordered child support payments may be included upon demonstration to the agency of the nature and amount of the payment.

(13) Monthly deposit in an emergency fund.

(b) For rent, utilities, and telephone, the individual's share shall be determined by equitably prorating monthly rent among all occupants, excluding the minor dependents of those occupants who are also living in the residence. *(Division of Mental Health and Addiction; 440 IAC 7.5-3-7; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3138; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2363)*

SECTION 9. 440 IAC 7.5-4-4 IS AMENDED TO READ AS FOLLOWS:

440 IAC 7.5-4-4 Certification procedure
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-22-2-3; IC 12-22-2-11; IC 12-28-4

Sec. 4. (a) An application for the certification of a sub-acute facility or a supervised group living facility shall be submitted to the division in the following circumstances:

(1) The agency intends to operate a facility.

(2) The agency with an existing certification proposes to change the type of service or type of facility.

(3) A facility has changed ownership or management.

(b) The applicant shall file the following:

(1) A statement that the agency is applying to be a residential care provider.

(2) A residential care provider application.

(3) A statement that the agency applying for certification is a community mental health center, a managed care provider, or an addiction services provider with regular certification.

(4) A certificate from the local zoning authority to occupy and operate a sub-acute facility or supervised group living facility on the site.

(5) A plan of operation, which shall include the following:

(A) A description of the facility and its location, including floor plans.

(B) Corporate or partnership structure of the agency.

(C) The provision of the following:

(i) Twenty-four (24) hour supervision.

(ii) Services provided under the supervision of a physician licensed to practice medicine in Indiana.

(iii) Sufficient staffing to carry out treatment plans and provide consumer and staff safety.

(D) A facility description, as required at 440 IAC 7.5-2-3.

(6) Information verified by the state fire marshal indicating whether the facility's operation is in compliance with the applicable fire and life safety standards set forth in 440 IAC 7.5-8, 440 IAC 7.5-9, ~~or~~ 440 IAC 7.5-10, **or 440 IAC 7.5-11.**
(7) The complete accreditation report by an accrediting body approved by the division.

(c) The division shall approve the certification of a facility under this rule if the division determines that the facility meets the requirements in this article.

(d) The certification shall expire ninety (90) days after the expiration of the agency's accreditation. *(Division of Mental Health and Addiction; 440 IAC 7.5-4-4; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3139; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2363)*

SECTION 10. 440 IAC 7.5-4-7 IS AMENDED TO READ AS FOLLOWS:

440 IAC 7.5-4-7 Requirements specific to a sub-acute facility

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-17.4-3; IC 12-22-2-3; IC 12-24-12; IC 12-25; IC 12-28; IC 12-30-3; IC 16-28

Sec. 7. (a) A sub-acute stabilization facility is a facility in which an agency provides twenty-four (24) hour supervised treatment for psychiatric disorders or addictions, or both, that is less restrictive than an inpatient facility and more restrictive than a supervised group living facility.

(b) A sub-acute stabilization facility serves at least four (4) and not more than fifteen (15) individuals.

(c) The director of the division may waive the resident limitations for a sub-acute stabilization facility **certified before January 1, 2003.**

(d) A sub-acute stabilization facility may function as one (1) or both of the following:
(1) A crisis care or respite care facility:
(A) that serves people in need of short term respite care or short term crisis care; and
(B) the length of stay shall not exceed forty-five (45) days.
(2) Rehabilitative facility:
(A) that serves people who have a need for treatment of psychiatric disorders or addictions; and
(B) the length of stay in a rehabilitative facility shall not exceed one (1) year. The division director may waive the one (1) year limitation **when evidence is presented that a less restrictive setting is inappropriate.**

(e) A sub-acute facility may be:
(1) a house; ~~or~~
(2) a congregate ~~living facility.~~ **residence; or**
(3) an I-3 occupancy as adopted by reference under 675 IAC 13-2.4-1(a).
(Division of Mental Health and Addiction; 440 IAC 7.5-4-7; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3140; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2364)

SECTION 11. 440 IAC 7.5-4-8 IS AMENDED TO READ AS FOLLOWS:

440 IAC 7.5-4-8 Requirements specific to a supervised group living facility

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-3

Sec. 8. (a) A supervised group living facility is a residential facility in which an agency provides twenty-four (24) hour supervision for residents with a psychiatric disorder or an addiction, or both.

(b) A supervised group living facility serves up to ten (10) consumers in a single family dwelling and up to fifteen (15) consumers in ~~a~~ **an** apartment or **a** congregate ~~living setting.~~ **residence.**

(c) No supervised group living facility shall be licensed by the division if it is within one thousand (1,000) feet of another SGL licensed under this article unless the facility was approved by the division prior to October 1, 1984.

(d) The division may waive the one thousand (1,000) foot limitation for particular homes. Such waivers shall conform to the intent of the rule, which is to avoid the creation of nontherapeutic concentrations of residential facilities in any given area, and, once given, will remain as long as the facility is licensed as a supervised group living facility.

(e) A supervised group living facility may be an apartment, **a** house, or **a** congregate ~~facility.~~ **residence.**

(f) No supervised group living facility shall be located in or connected to buildings that have any other use or occupancy. *(Division of Mental Health and Addiction; 440 IAC 7.5-4-8; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3140; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2364)*

SECTION 12. 440 IAC 7.5-5-1 IS AMENDED TO READ AS FOLLOWS:

440 IAC 7.5-5-1 Transitional residential facility

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-3

Sec. 1. (a) A transitional residential facility must meet all of the following requirements:
(1) The facility serves fifteen (15) or fewer persons with a psychiatric disorder or an addiction, or both. The limit of fifteen (15) persons does not include children of the consumers.
(2) The persons served require a time limited supportive residential environment.

(3) The persons' individual treatment plans are overseen by:
(A) a community mental health center;
(B) a certified residential care provider;
(C) a managed care provider; or
(D) an addiction services provider with regular certification.

(b) The division director may waive the limitation of fifteen (15) or fewer persons.

(c) In order for the limitation to be waived, the transitional residential facility must be accredited by an accrediting agency approved by the division **and must have been certified prior to January 1, 2003.**

(d) Before a waiver is granted, the agency shall have an inspection conducted by the office of the state fire marshal to determine whether the facility's operation is in compliance with the applicable fire and life safety standards set forth in 440 IAC 7.5-8, 440 IAC 7.5-9, or 440 IAC 7.5-10.

(e) If a waiver is granted, the waiver will remain as long as the residence is accredited and operated by the agency.

(f) A transitional residential facility may be an apartment, **a** house, or **a** congregate ~~facility.~~ **residence.**

(g) A transitional residential facility shall have evidence of compliance with local health and safety codes. *(Division of Mental Health and Addiction; 440 IAC 7.5-5-1; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3140; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2364)*

SECTION 13. 440 IAC 7.5-8-1 IS AMENDED TO READ AS FOLLOWS:

440 IAC 7.5-8-1 Scope
Authority: IC 12-21-2-3
Affected: IC 12-22-2

Sec. 1. Facilities located in apartment buildings for persons with a psychiatric disorder or addicted individuals shall achieve a classification of prompt evacuation capability, as defined in ~~431 IAC 4-1-5,~~ **this article,** and shall comply with:
(1) the Indiana building code under the provisions of 675 IAC 13 in effect at the time of the initial:
(A) application for licensure with the division; or ~~at the time of the initial~~
(B) certification by the agency;
whichever is later; or
(2) the Indiana building rehabilitation standard, 675 IAC 12-8, for the rehabilitation of older structures.
(Division of Mental Health and Addiction; 440 IAC 7.5-8-1; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3144; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2365)

SECTION 14. 440 IAC 7.5-8-2 IS AMENDED TO READ AS FOLLOWS:

440 IAC 7.5-8-2 Application
Authority: IC 12-21-2-3
Affected: IC 12-22-2

Sec. 2. (a) The **agency shall determine the** level of evacuation capabilities of the residents as a group by the procedures described in Appendix F of the National Fire Protection Association **(NFPA)** 101, Life Safety Code, ~~1985~~ **2000** Edition. ~~shall be determined for persons with a psychiatric disorder or addiction by the agency.~~

(b) On the basis of ~~this~~ **the** evaluation under subsection (a), a facility shall be classified as one (1) of the following:
(1) Prompt.
(2) Slow.
(3) Impractical.
(Division of Mental Health and Addiction; 440 IAC 7.5-8-2; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3144; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2365)

SECTION 15. 440 IAC 7.5-8-3 IS AMENDED TO READ AS FOLLOWS:

440 IAC 7.5-8-3 Adoption by reference
Authority: IC 12-21-2-3
Affected: IC 12-22-2

Sec. 3. (a) ~~Those certain documents being~~ **The document** titled the NFPA 101, Appendix F of the Life Safety Code, ~~1985~~ **2000** Edition, published by the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269, and as listed in this article, ~~are~~ **is** hereby adopted by reference, subject to the listed amendments, and made part of this article as if fully set out herein.

(b) Within the standards adopted under subsection (a), "authority having jurisdiction" means the division.

(c) Publications referenced within the ~~documents~~ **document** adopted in subsection (a), unless specifically adopted by reference in this article, are deemed to be accepted practice and supplementary to ~~these documents.~~ **this document.** *(Division of Mental Health and Addiction; 440 IAC 7.5-8-3; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3144; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2365)*

SECTION 16. 440 IAC 7.5-9-1 IS AMENDED TO READ AS FOLLOWS:

440 IAC 7.5-9-1 Scope
Authority: IC 12-21-2-3
Affected: IC 12-22-2

Sec. 1. (a) All one (1) and two (2) family dwellings licensed under 431 IAC 2.1 prior to January 18, 1996, shall:
(1) achieve a classification of prompt evacuation capability, as defined in 440 IAC 7.5-1, for one (1) and two (2) family dwellings for persons with a psychiatric disorder or addicted individuals; and

(2) comply with the Indiana one (1) and two (2) family dwelling code under the rules of the fire prevention and building safety commission or its predecessors.

(b) All one (1) and two (2) family dwellings licensed under 431 IAC 2.1, **which was repealed in 2002,** or under 440 IAC 7.5 after January 18, 1996, shall:

(1) achieve a classification of prompt evacuation capability, as defined in 440 IAC 7.5-1, for community residential facilities for persons with a psychiatric disorder or addicted individuals; and

(2) comply with:

(A) the Indiana one (1) and two (2) family dwelling code under the provisions of 675 IAC 14, which is in effect at the time of **the** initial:

(i) application for licensure with the division; or ~~at the time of the initial~~

(ii) certification by the agency;

whichever is later; or

(B) the Indiana building rehabilitation standard, 675 IAC 12-8, for the rehabilitation of older structures.

(Division of Mental Health and Addiction; 440 IAC 7.5-9-1; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3144; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2365)

SECTION 17. 440 IAC 7.5-9-2 IS AMENDED TO READ AS FOLLOWS:

440 IAC 7.5-9-2 Application

Authority: IC 12-21-2-3
Affected: IC 12-22-2

Sec. 2. (a) The **agency shall determine the** level of evacuation capabilities of the residents as a group by the procedures described in Appendix F of the National Fire Protection Association **(NFPA)** 101, Life Safety Code, ~~1985~~ **2000** Edition. ~~shall be determined by the agency.~~

(b) On the basis of ~~this~~ **the** evaluation under subsection (a), a facility shall be classified as one (1) of the following:

(1) Prompt.

(2) Slow.

(3) Impractical.

(Division of Mental Health and Addiction; 440 IAC 7.5-9-2; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3145; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2366)

SECTION 18. 440 IAC 7.5-9-3 IS AMENDED TO READ AS FOLLOWS:

440 IAC 7.5-9-3 Adoption by reference

Authority: IC 12-21-2-3
Affected: IC 12-22-2

Sec. 3. (a) The document titled the NFPA 101, Appendix F of the Life Safety Code, ~~1985~~ **2000** Edition, published by the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269, and as listed in this article, ~~are~~ **is** hereby adopted by reference, subject to the listed amendments, and made part of this article as if fully set out herein.

(b) Within the standards adopted under subsection (a), "authority having jurisdiction" means the division.

(c) Publications referenced within the ~~documents~~ **document** adopted in subsection (a), unless specifically adopted by reference in this article, are deemed to be accepted practice and supplementary to ~~these documents.~~ **the document.** *(Division of Mental Health and Addiction; 440 IAC 7.5-9-3; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3145; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2366)*

SECTION 19. 440 IAC 7.5-10-1 IS AMENDED TO READ AS FOLLOWS:

Rule 10. Fire and Life Safety Standards for Congregate Residences for Persons with a Psychiatric Disorder or an Addiction

440 IAC 7.5-10-1 Scope

Authority: IC 12-21-2-3
Affected: IC 12-22-2

Sec. 1. (a) Congregate ~~living facilities~~ **residences** that are certified as sub-acute facilities may be located in or connected to buildings that have another use or occupancy.

(b) All congregate ~~living facilities~~ **residences** shall achieve a classification of prompt evacuation capability, **as defined in this article,** and shall comply with the:

(1) rules of the fire prevention and building safety commission that apply to a congregate residence under the provisions of 675 IAC 13 that are in effect at the time of **the initial:**

(A) application for licensure with the division; or ~~at the time of the initial~~

(B) certification by the agency;

whichever is later; **or**

(2) Indiana building rehabilitation standard, 675 IAC 12-8, for the rehabilitation of older structures.

(Division of Mental Health and Addiction; 440 IAC 7.5-10-1; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3145; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2366)

SECTION 20. 440 IAC 7.5-10-2 IS AMENDED TO READ AS FOLLOWS:

440 IAC 7.5-10-2 Application

Authority: IC 12-21-2-3
Affected: IC 12-22-2

Sec. 2. (a) The agency shall determine the level of evacuation capabilities of the residents as a group by the procedures described in Appendix F of the National Fire Protection Association **(NFPA) 101,** Life Safety Code, ~~1985~~ **2000** Edition.

(b) On the basis of ~~this~~ **the** evaluation under subsection (a), a facility shall be classified as one (1) of the following:

(1) Prompt.

(2) Slow.

(3) Impractical.

(Division of Mental Health and Addiction; 440 IAC 7.5-10-2; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3145; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2366)

SECTION 21. 440 IAC 7.5-10-3 IS ADDED TO READ AS FOLLOWS:

440 IAC 7.5-10-3 Adoption by reference

Authority: IC 12-21-2-3
Affected: IC 12-22-2

Sec. 3. (a) The document titled the NFPA 101, Appendix F of the Life Safety Code, 2000 Edition, published by the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269, and as listed in this article, is hereby adopted by reference, subject to the listed amendments, and made part of this article as if fully set out herein.

(b) Within the standards adopted under subsection (a), "authority having jurisdiction" means the division.

(c) Publications referenced within the document adopted in subsection (a), unless specifically adopted by reference in this article, are deemed to be accepted practice and supplementary to the document. *(Division of Mental Health and Addiction; 440 IAC 7.5-10-3; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2367)*

SECTION 22. 440 IAC 7.5-11 IS ADDED TO READ AS FOLLOWS:

Rule 11. Fire and Life Safety Standards for Secure or Locked Sub-Acute Facilities for Persons with a Psychiatric Disorder or an Addiction That Meet the Fire Prevention and Building Safety Commission Requirements for an I-3 Occupancy

440 IAC 7.5-11-1 Scope

Authority: IC 12-21-2-3
Affected: IC 12-22-2

Sec. 1. (a) A secure or locked sub-acute facility shall comply with the rules of the fire prevention and building safety commission that apply to an I-3 occupancy under the provisions of 675 IAC 13 that are in effect on the date the plans and specifications were filed with the office of the state building commissioner and may as follows:

(1) Be located in or connected to a building that has another use or occupancy.

(2) Be a locked or secure facility.

(3) Comply with the Indiana building rehabilitation standard, 675 IAC 12-8, for the rehabilitation of older structures.

(b) A secure or locked sub-acute facility that meets the fire prevention and building safety commission requirements for an I-3 occupancy as adopted by reference under 675 IAC 13-2.4-1(a) shall achieve a classification of prompt evacuation capability, as defined in this article. *(Division of Mental Health and Addiction; 440 IAC 7.5-11-1; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2367)*

440 IAC 7.5-11-2 Application

Authority: IC 12-21-2-3
Affected: IC 12-22-2

Sec. 2. (a) The agency shall determine the level of evacuation capabilities of the residents as a group by the procedures described in Appendix F of the National Fire Protection Association (NFPA) 101, Life Safety Code, 2000 Edition.

(b) On the basis of the evaluation under subsection (a), a facility shall be classified as one (1) of the following:

(1) Prompt.

(2) Slow.

(3) Impractical.

(Division of Mental Health and Addiction; 440 IAC 7.5-11-2; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2367)

440 IAC 7.5-11-3 Adoption by reference

Authority: IC 12-21-2-3
Affected: IC 12-22-2

Sec. 3. (a) The document titled the NFPA 101, Appendix F of the Life Safety Code, 2000 Edition, published by the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269, and as listed in this article, is hereby adopted by reference, subject to the listed amendments, and made part of this article as if fully set out herein.

(b) Within the standards adopted under subsection (a), "authority having jurisdiction" means the division.

(c) Publications referenced within the document adopted in subsection (a), unless specifically adopted by reference in this article, are deemed to be accepted practice and supplementary to the document. *(Division of Mental Health and Addiction; 440 IAC 7.5-11-3; filed Mar 30, 2005, 3:00 p.m.: 28 IR 2367)*

LSA Document #04-229(F)
Notice of Intent Published: September 1, 2004; 27 IR 4046
Proposed Rule Published: November 1, 2004; 28 IR 657
Hearing Held: December 15, 2004
Approved by Attorney General: March 3, 2005
Approved by Governor: March 30, 2005
Filed with Secretary of State: March 30, 2005, 3:00 p.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

LSA Document #04-76(F)

DIGEST

Adds 460 IAC 2-2.1 to reestablish and maintain a board of interpreter standards that was established by a previous rule that has expired, including composition of the board and its powers and duties that enable the board to determine the necessary competency and proficiency standards for sign language interpreters and oral interpreters. Effective 30 days after filing with the secretary of state.

460 IAC 2-2.1

SECTION 1. 460 IAC 2-2.1 IS ADDED TO READ AS FOLLOWS:

Rule 2.1. Board of Interpreter Standards

460 IAC 2-2.1-1 Purpose
Authority: IC 12-9-2-3; IC 12-12-7-5
Affected: IC 12-12-7

Sec. 1. The purpose of this rule is to protect the public and persons who are deaf or hard of hearing from misrepresentation, by establishing a board of interpreter standards and providing powers and duties to enable the board to determine the necessary competency and proficiency standards for sign language interpreters and oral interpreters. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-2.1-1; filed Mar 16, 2005, 11:30 a.m.: 28 IR 2368)*

460 IAC 2-2.1-2 Definitions
Authority: IC 12-9-2-3; IC 12-12-7-5
Affected: IC 12-9-1-1; IC 12-12-1-2; IC 12-12-7

Sec. 2. The following definitions apply throughout this rule:

(1) "ASL" means American Sign Language.

(2) "ASLTA" means American Sign Language Teacher Association.

(3) "Board" means the board of interpreter standards under the administration of the unit.

(4) "Deaf person" or "hard of hearing person" means a person who meets the following criteria:

(A) Has a hearing loss that prevents the person from receiving and understanding voice communication with or without amplification.

(B) Uses at least one (1) of the following as a primary means of communication:

(i) ASL.

(ii) English-based signed systems.

(iii) Tactile methods.

(iv) Writing.

(v) Reading.

(vi) Speech reading.

(vii) Finger spelling.

(viii) Beneficial assistive devices.

(5) "Division" means the division of disability, aging, and rehabilitative services established under IC 12-9-1-1.

(6) "Educational interpreter" means a person who performs the service of interpreting or transliterating in an educational setting.

(7) "Interpreter" means a person who performs the service of interpreting or transliterating.

(8) "Interpreting" means any method of interfacing communication between a deaf or hard of hearing person and a person who is not deaf or hard of hearing and includes:

(A) oral interpreting;

(B) sign language interpreting; or

(C) transliterating.

(9) "NAD" means the National Association of the Deaf.

(10) "Oral interpreting" means the process of interpreting or transliterating a spoken message from a hearing person to a deaf or hard of hearing person, or from a deaf or hard of hearing person to a hearing person, excluding sign language interpreting, as follows:

(A) Using clear articulation or voiceless repetition.

(B) Using natural facial expressions and natural gestures.

(C) Placing an emphasis on speech reading.

(D) Understanding and repeating the message and the intent of the message.

(E) Understanding and repeating the speech and mouth movements of the deaf or hard of hearing person.

(11) "Registered interpreter" means a person who has met the criteria established by the board in accordance with 460 IAC 2-3 and is registered by the board.

(12) "RID" means the Registry of Interpreters for the Deaf.

(13) "Sign language interpreting" means the process of conveying a message:

(A) produced in ASL into an equivalent message in spoken or written English; or

(B) in spoken or written English into an equivalent message in ASL.

(14) "Transliterating" means the process of presenting:

(A) written or spoken English into an English-based sign system; or

(B) an English-based sign system in written or spoken English.

(15) "Unit" means the unit for the deaf and hard of hearing services established under IC 12-12-1-2.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-2.1-2; filed Mar 16, 2005, 11:30 a.m.: 28 IR 2368)

460 IAC 2-2.1-3 Appointment of the board
Authority: IC 12-9-2-3; IC 12-12-7-5
Affected: IC 12-12-7

Sec. 3. (a) The unit shall make a public announcement to all prospective candidates in Indiana who wish to serve on the board. The prospective candidates shall submit a vita to the unit within thirty (30) days of the date of the public announcement.

(b) The board shall consist of seven (7) members. At least three (3) of the seven (7) members shall be persons who are deaf or hard of hearing.

(c) Board members shall meet at least one (1) of the following:

(1) Knowledge of the interpreting process, which includes having at least three (3) of the following:

(A) RID, NAD, or ASLTA certification.

(B) Membership in a deaf association.

(C) Graduation from an interpreter education program.

(D) One hundred (100) clock hours of attendance in a workshop regarding the interpreting process.

(E) One hundred (100) clock hours of ASL studies.

(2) At least five (5) years of documented experience as a provider or consumer of interpreting services.

(3) Three (3) letters of recommendation attesting to the following:

(A) Knowledge of interpreting.

(B) Fluency in ASL and English.

(d) Original appointments to the board shall be made in the following manner:

(1) Four (4) members for a term of two (2) years.

(2) Three (3) members for a term of three (3) years.

All members subsequently appointed shall serve a term of three (3) years and may be appointed for one (1) additional term. If a member of the board resigns, dies, or is removed, the new appointee shall serve the remainder of the unexpired term. Board members shall not be eligible for reappointment for at least one (1) year after serving two (2) consecutive terms.

(e) The board shall meet as needed and upon request by the board chairperson and board members.

(f) The board members shall elect a chairperson who shall serve a term of two (2) years and shall be eligible for reelection for an additional two (2) years.

(g) The board may request from the unit the purchase of materials for the operation of the board.

(h) The board, in cooperation with the unit, shall annually hold a public meeting to receive recommendations from consumers on upgrading the qualifications, functions, and registration of interpreters, and on policies concerning registration of interpreters. However, the board may receive program recommendations at any time prior to or after the annual public hearing. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-2.1-3; filed Mar 16, 2005, 11:30 a.m.: 28 IR 2368)*

LSA Document #04-76(F)
Notice of Intent Published: April 1, 2004; 27 IR 2302
Proposed Rule Published: August 1, 2004; 27 IR 3701
Hearing Held: August 23, 2004
Approved by Attorney General: February 9, 2005
Approved by Governor: March 10, 2005
Filed with Secretary of State: March 16, 2005, 11:30 a.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

LSA Document #04-56(F)

DIGEST

Amends 675 IAC 22-2.3, the 2003 Indiana Fire Code, to make substantive and clarifying changes and to add provisions concerning haunted houses. Repeals 675 IAC 22-2.2-49.5, 675 IAC 22-2.2-134.5, 675 IAC 22-2.2-183, 675 IAC 22-2.2-221.5, 675 IAC 22-2.2-245.2, 675 IAC 22-2.2-245.5, 675 IAC 22-2.2-365.2, 675 IAC 22-2.2-365.5, 675 IAC 22-2.2-369.5, 675 IAC 22-2.2-378.5, 675 IAC 22-2.2-412.5, 675 IAC 22-2.2-437.5, 675 IAC 22-2.2-437.7, 675 IAC 22-2.2-443.5, and 675 IAC 22-2.2-540. Effective 30 days after filing with the secretary of state.

675 IAC 22-2.2-49.5	**675 IAC 22-2.3-29.5**
675 IAC 22-2.2-134.5	**675 IAC 22-2.3-35.5**
675 IAC 22-2.2-183	**675 IAC 22-2.3-36**
675 IAC 22-2.2-221.5	**675 IAC 22-2.3-36.3**
675 IAC 22-2.2-245.2	**675 IAC 22-2.3-36.4**
675 IAC 22-2.2-245.5	**675 IAC 22-2.3-36.6**
675 IAC 22-2.2-365.2	**675 IAC 22-2.3-36.8**
675 IAC 22-2.2-365.5	**675 IAC 22-2.3-140.5**
675 IAC 22-2.2-369.5	**675 IAC 22-2.3-147.5**
675 IAC 22-2.2-378.5	**675 IAC 22-2.3-147.6**
675 IAC 22-2.2-412.5	**675 IAC 22-2.3-148**
675 IAC 22-2.2-437.5	**675 IAC 22-2.3-148.5**
675 IAC 22-2.2-437.7	**675 IAC 22-2.3-237.5**
675 IAC 22-2.2-443.5	**675 IAC 22-2.3-298.5**
675 IAC 22-2.2-540	**675 IAC 22-2.3-304.5**

SECTION 1. 675 IAC 22-2.3-29.5 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-29.5 Section 308.3.6; Group A occupancies

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 29.5. Amend Section 308.3.6 as follows:

(1) Delete the section heading "Group A Occupancies" and insert "Affected Occupancies".

(2) In the first sentence, delete "a Group A Occupancy" and insert "any occupancy other than all Group "R" occupancies".

(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-29.5; filed Mar 21, 2005, 9:15 a.m.: 28 IR 2369)

SECTION 2. 675 IAC 22-2.3-35.5 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-35.5 Section 315.2.1; ceiling clearance

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 35.5. Add an exception to Section 315.2.1 as follows: EXCEPTION: Sidewall storage to a maximum depth of thirty (30) inches (seventy-six and two-tenths (76.2) centimeters) of in-rack storage shall be acceptable to the ceiling. *(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-35.5; filed Mar 21, 2005, 9:15 a.m.: 28 IR 2370)*

SECTION 3. 675 IAC 22-2.3-36 IS AMENDED TO READ AS FOLLOWS:

675 IAC 22-2.3-36 Section 316; outdoor carnivals and fairs

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 36. ~~Add~~ **Change** Section 316 Outdoor Carnivals and Fairs to read as follows: SECTION 316. CARNIVALS AND FAIRS

316.1 General. The grounds of carnivals and fairs, including concession booths, shall be in accordance with Section 316.

316.2 Grounds.

316.2.1 General. Grounds shall be in accordance with Section 316.2.

316.2.2 Access. Fire apparatus access roads shall be provided in accordance with Section 503.

316.2.3 Fire appliances.

316.2.3.1 General. Fire appliances shall be provided for the entire midway, as required by the chief.

316.2.3.2 Location. Maximum travel distance to a portable fire extinguisher shall not exceed seventy-five (75) feet ~~(twenty-two thousand eight hundred sixty (22,860) mm).~~ **(twenty-two and eighty-six hundredths (22.86) meters).**

316.2.4 Electrical equipment. Electrical equipment and installations shall comply with the Electrical Code (675 IAC 17).

316.3 Concession Stands.

316.3.1 General. Concession stands shall be in accordance with Section 316.3.

316.3.2 Location. Concession stands utilized for cooking shall have a minimum of ten (10) feet ~~(three thousand forty-eight (3,048) mm)~~ **(three and forty-eight thousandths (3.048) meters)** of clearance on two (2) sides and shall not be located within ten (10) feet ~~(three thousand forty-eight (3,048) mm)~~ **(three and forty-eight thousandths (3.048) meters)** of amusement rides or devices.

316.3.3 Fire extinguishers. A 40-B:C-rated dry chemical fire extinguisher shall be provided where deep-fat fryers are used.

316.3.4 Hinges, awnings, and braces must be safety keyed. Nails shall not be used for hinge or support pins.

316.3.5 When tent stakes and ropes extend into traffic areas, highly visible covers shall be provided.

316.4 Internal Combustion Power Sources.

316.4.1 General. Internal combustion power sources, including motor vehicles, generators, and similar equipment, shall be in accordance with Section 316.4.

~~315.4.2~~ **316.4.2** Fueling. Fuel tanks shall be of adequate capacity to permit uninterrupted operation during normal operating hours. Refueling shall be conducted only when the ride is not in use.

316.4.3 Protection. Internal combustion power sources shall be isolated from contact with the public by either physical guards, fencing, or an enclosure.

316.4.4 Fire extinguishers. A minimum of one (1) fire extinguisher with a rating of not less than 2-A:10-B:C shall be provided.

316.4.5 Notification. The servicing fire department shall be notified not less than seventy-two (72) hours prior to the admission of the public.

316.4.6 Vehicular traffic. No vehicle except emergency fire or rescue equipment shall be permitted on the midway from the time the midway opens until closing (including owners, operators, vendors, and service vehicles). *(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-36; filed Apr 17, 2003, 5:00 p.m.: 26 IR 2972; filed Mar 21, 2005, 9:15 a.m.: 28 IR 2370)*

SECTION 4. 675 IAC 22-2.3-36.3 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-36.3 Section 317; haunted houses and similar temporary installations

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 36.3. Add Section 317 Haunted Houses and Similar Temporary Installations to read as follows: SECTION 317 HAUNTED HOUSES AND SIMILAR TEMPORARY INSTALLATIONS

This section applies to haunted houses and similar installations set up for temporary use, not exceeding ninety (90) days. Any interior within a structure not designed for this specific use shall comply with the following and all other applicable rules:

(1) In any facility using the maze concept, there shall be no dead-end corridors and there shall be an obvious exit out of the maze for every fifty (50) feet (fifteen and twenty-four hundredths (15.24) meters) of linear travel. All stairways shall be illuminated at a level of a least one (1) foot-candle (eleven (11) lux).

(2) A group shall consist of twenty (20) individuals or fewer. Each group shall be accompanied or supervised by

a staff person who is eighteen (18) years of age or older. This staff person shall have in his or her possession an operable flashlight and shall be completely familiar with the facility.

(3) There shall be no smoking allowed at any time by anyone inside the building.

(4) All electrical installations shall meet 675 IAC 17, the Indiana Electrical Code.

(5) The servicing fire department shall be contacted at least three (3) working days prior to the placing of the facility in operation for an inspection and planning of evacuation procedures. A sketch of the floor plan shall be provided to the servicing fire department to facilitate these procedures.

(6) The total number of occupants in the facility at any time shall be limited to the number allowed by the total exits from the installation, as determined by the Indiana Building Code (675 IAC 13) in effect at the time of construction of the building, building system, or alterations.

(7) Fire extinguishers shall be distributed throughout the building so that no more than seventy-five (75) feet (twenty-two and eighty-six hundredths (22.86) meters) must be traversed to each fire extinguisher.

(8) There shall be no open flame devices or temporary heaters used in the building.

(9) Automatic smoke detectors shall be installed in accordance with NFPA 72 (675 IAC 22-2.2). All smoke detectors shall be interconnected so that when one is activated, all are activated. When activated, the alarm shall be loud enough to be heard over all other sounds or the activation shall automatically shut down all sound devices within the facility.

(10) All areas of a maze shall be at least three (3) feet (ninety-one and four-tenths (91.4) centimeters) wide and five (5) feet (one and five hundred twenty-four thousandths (1.524) meters) high, except that a section not exceeding four (4) feet (one and twenty-two hundredths (1.22) meters) in length may be two (2) feet (sixty and ninety-six hundredths (60.96) centimeters) high and two (2) feet (sixty and ninety-six hundredths (60.96) centimeters) wide. There shall not be more than one (1) such four (4) foot (one and twenty-two hundredths (1.22) meter) section in every fifty (50) linear feet (fifteen and twenty-four hundredths (15.24) meters).

(11) All material used in all display areas of a haunted house and all material used in the construction of a maze shall be inherently flame-resistant or made so by treatment with a flame retardant. All substances used to make materials flame-resistant shall be applied in accordance with the manufacturer's instructions, and the containers and proof of purchase of the substances shall be retained for inspection by the code official.

(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-36.3; filed Mar 21, 2005, 9:15 a.m.: 28 IR 2370)

SECTION 5. 675 IAC 22-2.3-36.4 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-36.4 Section 318; fire safety in racetrack stables

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 36.4. Add Section 318 Fire Safety in Racetrack Stables to read as follows: SECTION 318 FIRE SAFETY IN RACETRACK STABLES

318.1 Scope. Racetrack stables shall be in accordance with this section.

318.2 Definitions

For purposes of this section, the following definitions apply:

ASSIGNED BARN. The barn area where a trainer has been allocated stalls and space for the trainer's horses and equipment.

ASSISTANT TRAINER. The person next to the listed trainer of record, and the one who frequently handles the day-to-day affairs in training a horse or horses.

CONCESSIONAIRES. The holders of a concession, such as the track kitchen, granted by the racetrack management.

HALTER. Piece of equipment that fits around a horse's head, like a bridle, but lacking a bit. It is used in handling horses around the stable. In the event of a fire, horses can be led from stalls by halters.

MECHANICAL HOTWALKER. An electrical device that automatically walks a horse or several horses in a circle with an approximate radius of ten (10) to fifteen (15) feet (three and forty-eight thousandths (3.048) to four and fifty-seven hundredths (4.57) meters).

MIXED OCCUPANCY. A building or stable area where both horses and humans reside.

RACETRACK MANAGEMENT. The persons who control or execute the affairs of the track itself.

TACK. Stable gear; also rider's racing equipment.

TACK ROOM. A storage area for tack and stable equipment.

TRACK SECURITY. Persons employed to protect racetrack property and to ensure the proper passage of licensed personnel; track security may be internal or external.

TRAINER. The person responsible for the care and training of a horse or horses.

318.3 Management responsibilities.

318.3.1 All trainers or a designated assistant and all concessionaires or a designated assistant shall serve as liaison between the track security and fire protection supervisors and the employees of the trainers and concessionaires.

318.3.2 All trainers or their assistants and all concessionaires or their assistants shall acquaint themselves with and brief their employees as to the following:

(1) Smoking regulations.

(2) Location of fire alarm notification system devices in the immediate area of an assigned barn.

(3) Location of all fire extinguishers and extinguishing equipment in assigned barn area.

(4) Regulations regarding occupancy, use of extension cords for extending electrical circuits, and use of electrical appliances.

(5) Regulations regarding storage and use of feed, straw, tack, and supplies.

(6) Track regulations with regard to fire and security, copies of which shall be provided to all trainers or their assistants and concessionaires or their assistants. These regulations shall be used in instructing members of the trainers' and concessionaires' staffs assigned to the barn area.

318.3.3 Open burning. Open burning is prohibited. Open flame heating devices are prohibited. Unvented portable oil-burning heating appliances are not permitted in stables.

318.3.4 Smoking. Smoking is prohibited in assigned barns. Approved "No Smoking" signs shall be posted in assigned barns.

318.3.5 Trash removal. All combustible trash and waste shall be removed from all buildings daily. Noncombustible trash and waste containers shall be provided for other than stall waste and shall be emptied daily.

318.3.6 Hay or straw storage. Storage shall not exceed the amount for two (2) days' use by the horses in the assigned barn. All other hay and straw must be in a separate, approved outside storage area. Hay and straw piles shall not exceed twenty (20) bales (rectangular) per pile and shall not exceed seven (7) feet (two and thirteen-hundredths (2.13) meters) in height. Each pile must be separated by a distance of not less than fifty (50) feet (fifteen and twenty-four hundredths (15.24) meters). Hay and straw shall not be stored in aisle space or in aisles.

318.3.7 Electrical systems and appliances.

318.3.7.1 The use of any portable electrical appliance shall be as follows:

(1) Multiple-outlet adapters are prohibited.

(2) Not more than one (1) continuous extension cord shall be used to connect one (1) appliance to the fixed electrical receptacle, and such cord shall be listed for hard service and properly sized for the intended application.

(3) Extension cords shall not be used as a substitute for permanent wiring.

318.3.7.2 Extension cords shall not be supported by any metal object, such as a nail, screw, hook, or pipe.

318.3.7.3 Plug caps and receptacles used in extension cords shall be heavy-duty type equipped with a reliable grounding pole and attached to the cord in a manner to provide strain relief.

318.3.7.4 All electrical appliances used in the stable area shall be listed for the use.

318.3.7.5 Outdoor electrical appliances, for example, mechanical hotwalkers, served by the barn electrical system shall be installed in accordance with the Indiana Electrical Code (675 IAC 17).

318.3.7.6 Portable cooking and heating appliances shall not be used in assigned barns.

318.3.7.7 Use of exposed-element heating appliances is prohibited.

318.3.7.8 The storage of flammable and combustible liquids, except those used for medicinal purposes, is prohibited.

318.3.7.9 Vehicles shall not be permitted in assigned barns. Aisles shall be maintained clear of obstructions at all times, and access to fire equipment shall not be blocked.

318.4 Animal evacuation.

318.4.1 Every horse shall wear a halter at all times while inside the assigned barn.

318.4.2 Horses shall be restricted to ground level stalls.

318.4.3 An assigned barn escape plan shall be established for each stable building.

318.4.4 The assigned barn escape plan shall be posted by each exit from the assigned barn, and a copy shall be given to all stall renters.

318.4.5 A fire safety and evacuation drill shall be conducted quarterly for employees only.

318.4.6 A predetermined location shall be designated for placement of horses when they are evacuated from the assigned barns.

318.4.7 Racetrack management shall ensure that all employees are trained in the assigned barn escape plan.

318.5 Where automatic sprinklers are installed, they shall be installed, tested, and maintained in accordance with the applicable rules of the commission.

318.6 Fire extinguishers shall be provided in all assigned barns as follows:

(1) Fire extinguishers shall have a minimum 2A rating.

(2) Fire extinguishers shall be placed so that travel distance shall be not more than seventy-five (75) feet (twenty-two and eighty-six hundredths (22.86) meters) from any point within a building.

(3) Fire extinguishers within twenty (20) feet (six and ninety-six thousandths (6.096) meters) of electrical control boxes shall have a Class C rating.

(4) Fire extinguishers shall be installed, tested, and maintained in accordance with the applicable rules of the commission.

(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-36.4; filed Mar 21, 2005, 9:15 a.m.: 28 IR 2371)

SECTION 6. 675 IAC 22-2.3-36.6 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-36.6 Section 403.3; fire watch

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 36.6. Add a new Section 403.3 Fire Watch to read as follows: Whenever it is essential for public safety in any Class 1 structure, due to the number of persons or the nature of the activity being conducted, the chief may require the owner or lessee to employ one (1) or more qualified persons, to be approved by the chief, to be on duty in such Class 1 structure to serve as a fire watch. Such persons shall:

(1) be subject to the chief's orders at all times;
(2) be in uniform; and
(3) remain on duty at all times that such Class 1 structure is open to the public.
Such persons shall not be required or permitted, while on duty, to perform any duties other than the fire watch. Such persons shall be provided at the ratio of one (1) qualified person per five hundred (500) occupant load. *(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-36.6; filed Mar 21, 2005, 9:15 a.m.: 28 IR 2372)*

SECTION 7. 675 IAC 22-2.3-36.8 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-36.8 Section 403.4; overcrowding
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 36.8. Add a new Section 403.4 Overcrowding to read as follows: Section 403.4 Overcrowding
Overcrowding and admittance of persons beyond the approved occupant load are prohibited. The code official, upon finding:
(1) overcrowding conditions or obstructions in aisles, corridors, or other means of egress; or
(2) a condition that constitutes a serious menace to life;
is authorized to cause all activities in the room or space to cease until such overcrowding, obstructions, or conditions are corrected. The code official is also authorized to order the evacuation of the building, if necessary, to eliminate the overcrowding. *(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-36.8; filed Mar 21, 2005, 9:15 a.m.: 28 IR 2373)*

SECTION 8. 675 IAC 22-2.3-140.5 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-140.5 Section 1003.3.1.3.4; access-controlled egress doors
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 140.5. Delete Section 1003.3.1.3.4 without substitution. *(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-140.5; filed Mar 21, 2005, 9:15 a.m.: 28 IR 2373)*

SECTION 9. 675 IAC 22-2.3-147.5 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-147.5 Section 1005.3.2.2
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 147.5. Delete the last sentence of Section 1005.3.2.2 and insert the following: The open space under exit stairways shall not be used for any purpose. *(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-147.5; filed Mar 21, 2005, 9:15 a.m.: 28 IR 2373)*

SECTION 10. 675 IAC 22-2.3-147.6 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-147.6 Section 1005.3.7; fire escapes
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 147.6. Add Section 1005.3.7 Fire escapes to read as follows: Section 1005.3.7 Fire escapes
A fire escape that is used as an exit shall comply with the provisions of this section as follows:
(1) The fire escape shall not be the primary or the only exit.
(2) The fire escape shall not take the place of stairways required by the applicable rules of the commission or its predecessors in effect at the time the building was built.
(3) Access to a fire escape from a corridor shall not be through an intervening room.
EXCEPTION: Access through an intervening room may be permitted if the intervening door is not lockable and an exit sign is installed above the door directing occupants to the fire escape.
(4) No encumbrances or obstacles of any kind shall be placed on or in front of any fire escape.
(5) Fire escapes shall be kept clear and unobstructed and shall be maintained in a fully operational working condition at all times.
(6) Exit signs shall be maintained in accordance with the Indiana Fire Code, 675 IAC 22, or the code in effect at the time of construction. All doors and windows providing access to a fire escape shall be provided with signs stating "FIRE ESCAPE" in letters at least as large as those required for exit signs under the current rules of the commission.
(7) Fire escape stairways and their balconies shall support their dead load plus a live load of not less than one hundred (100) pounds per square foot (four hundred eighty-eight (488) kilograms per square meter) or a concentrated load of three hundred (300) pounds (one hundred thirty-six (136) kilograms) placed anywhere on the balcony or stairway so as to produce the maximum stress condition.
(8) Fire escape stairways and balconies shall be provided with a top and intermediate handrail on the open side. All stair and balcony railings shall support a horizontal force of not less than fifty (50) pounds per linear foot (seventy-four and four-tenths (74.4) kilograms per meter) applied to the top handrail.
(9) Documentation evidencing compliance with subsections (7) and (8) shall be maintained on site for review by the code official.
(10) Tubular fire escapes shall comply with subsections (1) through (9) and shall be kept rust free.
(Fire Prevention and Building Safety Commission; 675 IAC 22-

2.3-147.6; filed Mar 21, 2005, 9:15 a.m.: 28 IR 2373)

SECTION 11. 675 IAC 22-2.3-148 IS AMENDED TO READ AS FOLLOWS:

675 IAC 22-2.3-148 Section 1008.10; seat stability
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 148. In Section 1008.10 Seat stability:
(1) in Exception 3, after "less than three", insert "tied or staked to the floor"; and
(2) delete the last sentence of Exception 4.
(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-148; filed Apr 17, 2003, 5:00 p.m.: 26 IR 2986; filed Mar 21, 2005, 9:15 a.m.: 28 IR 2374)

SECTION 12. 675 IAC 22-2.3-148.5 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-148.5 Section 1008.10.1; chairs and benches
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 148.5. Add subsection 1008.10.1 Chairs and benches to read as follows: 1008.10.1 Chairs and benches
Chairs and benches used on raised stands or platforms shall be secured to the stands or platforms upon which they are placed. *(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-148.5; filed Mar 21, 2005, 9:15 a.m.: 28 IR 2374)*

SECTION 13. 675 IAC 22-2.3-237.5 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-237.5 Section 2416.1; crowd managers
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 237.5. Delete Section 2416.1 without substitution. *(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-237.5; filed Mar 21, 2005, 9:15 a.m.: 28 IR 2374)*

SECTION 14. 675 IAC 22-2.3-298.5 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-298.5 Section 3404.3.2.3; number of storage cabinets
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 298.5. Delete Section 3404.3.2.3 without substitution. *(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-298.5; filed Mar 21, 2005, 9:15 a.m.: 28 IR 2374)*

SECTION 15. 675 IAC 22-2.3-304.5 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-304.5 Section 3405.3.7.5.3; spill control and secondary containment
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 304.5. Change the first sentence of Section 3405.3.7.5.3 to read as follows: Spill control shall be provided in accordance with Section 3403.4 where Class I, II, or IIIA liquids are dispensed into containers exceeding a two (2) gallon (seven and six-tenths (7.6) liter) capacity or mixed or used in open containers or systems exceeding five and three-tenths (5.3) gallon (twenty (20) liter) capacity. *(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-304.5; filed Mar 21, 2005, 9:15 a.m.: 28 IR 2374)*

SECTION 16. THE FOLLOWING ARE REPEALED: 675 IAC 22-2.2-49.5; 675 IAC 22-2.2-134.5; 675 IAC 22-2.2-183; 675 IAC 22-2.2-221.5; 675 IAC 22-2.2-245.2; 675 IAC 22-2.2-245.5; 675 IAC 22-2.2-365.2; 675 IAC 22-2.2-365.5; 675 IAC 22-2.2-369.5; 675 IAC 22-2.2-378.5; 675 IAC 22-2.2-412.5; 675 IAC 22-2.2-437.5; 675 IAC 22-2.2-437.7; 675 IAC 22-2.2-443.5; 675 IAC 22-2.2-540.

LSA Document #04-56(F)
Notice of Intent Published: April 1, 2004; 27 IR 2303
Proposed Rule Published: June 1, 2004; 27 IR 2859
Hearing Held: August 17, 2004 ***AND*** *January 4, 2005*
Approved by Attorney General: February 23, 2005
Approved by Governor: March 17, 2005
Filed with Secretary of State: March 21, 2005, 9:15 a.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #04-140(F)

DIGEST

Amends 760 IAC 1-21 regarding definitions, filing of proof of financial responsibility, use of insurance and means other than insurance for proof of financial responsibility, certificates of insurance, deposits, reserves, surcharge payment and amount, corporations as qualified health care providers, the annual aggregate, settlement of claims, and communication between the Department of Insurance and the health care provider. Effective 30 days after filing with the secretary of state.

760 IAC 1-21-2
760 IAC 1-21-3
760 IAC 1-21-4
760 IAC 1-21-5
760 IAC 1-21-8
760 IAC 1-21-10
760 IAC 1-21-11

SECTION 1. 760 IAC 1-21-2 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-21-2 Definitions

Authority: IC 34-18-5-4
Affected: IC 16-21-2; IC 16-28; IC 27-28; IC 25-22.5; IC 34-18-2-14; IC 34-18-17

Sec. 2. ~~As used in~~ **The following definitions apply throughout** this rule:

(1) ~~"Health care~~ **"Ancillary** provider" means all health care providers as defined in IC 34-18-2-14, except physicians and hospitals.

~~(2) "Hospital" means a public or private institution licensed under IC 16-21-2.~~

(2) "Claims made coverage" means coverage for claims made during a coverage period.

(3) "Commissioner" means the commissioner of insurance of Indiana.

(4) "Department" means the Indiana department of insurance.

(5) "Health facility" means a facility named on the license issued by the state department of health under IC 16-28.

(6) "Hospital" means a public or private institution licensed under IC 16-21-2.

(7) "IRMIA" means the Indiana residual malpractice insurance authority created by IC 34-18-17.

(8) "Occurrence based coverage" means coverage for acts that occur during a coverage period.

~~(4)~~ **(9)** "Physician" means an individual with an unlimited license to practice medicine under IC 25-22.5.

(Department of Insurance; Reg 22, Sec II; filed Jan 27, 1977, 2:35 p.m.: Rules and Regs. 1978, p. 514; filed Apr 29, 1999, 2:22 p.m.: 22 IR 2874; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; filed Mar 18, 2005, 10:45 a.m.: 28 IR 2375)

SECTION 2. 760 IAC 1-21-3 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-21-3 Establishment of financial responsibility by ancillary provider or physician

Authority: IC 34-18-5-4
Affected: IC 34-18-4-1

Sec. 3. ~~A health care~~ **(a) An ancillary** provider or a physician desiring to establish financial responsibility under IC 34-18-4-1 by a means other than insurance may do so by submitting, to the commissioner, the following:

(1) An agreement in writing, in a form and manner prescribed by the commissioner, to pay any final judgment or agreed settlement arising from claims of malpractice in accordance with the limits on liability set forth in IC 34-18-4-1(1).

(2) Filing and maintaining with the commissioner, cash or surety bonds, from a company acceptable to the commissioner, in accordance with the limits on liability set forth in IC 34-18-4-1(1) for each year in which financial responsibility is established by a means other than insurance.

(b) An ancillary provider or physician that establishes proof of financial responsibility under this section may obtain only occurrence based coverage. Claims made coverage is not available. *(Department of Insurance; Reg 22,Sec III; filed Jan 27, 1977, 2:35 p.m.: Rules and Regs. 1978, p. 514; filed Apr 29, 1999, 2:22 p.m.: 22 IR 2874; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; filed Mar 18, 2005, 10:45 a.m.: 28 IR 2375)*

SECTION 3. 760 IAC 1-21-4 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-21-4 Retention of deposit during liability

Authority: IC 34-18-5-4
Affected: IC 34-18-4-1; IC 34-18-4-2

Sec. 4. If ~~a health care~~ **an ancillary** provider or physician that has established financial responsibility, in the manner set forth in section 3 of this rule:

(1) ceases practice;

(2) establishes financial responsibility by means of insurance; or

(3) decides that he or she no longer wishes to establish financial responsibility under IC 34-18;

any cash or surety bond filed with the commissioner shall remain on deposit until liability ceases to exist. *(Department of Insurance; Reg 22,Sec IV; filed Jan 27, 1977, 2:35 p.m.: Rules and Regs. 1978, p. 515; filed Apr 29, 1999, 2:22 p.m.: 22 IR 2874; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; filed Mar 18, 2005, 10:45 a.m.: 28 IR 2375)*

SECTION 4. 760 IAC 1-21-5 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-21-5 Financial responsibility of hospital

Authority: IC 34-18-5-4
Affected: IC 16-21-2; IC 34-18-4-1; IC 34-18-5-3

Sec. 5. A hospital may establish financial responsibility for itself, its officers, agents, and employees by submitting, to the commissioner, all of the following **at least sixty (60) days before the requested effective date of coverage with the patient's compensation fund:**

(1) An agreement in writing, in a form and manner prescribed by the commissioner, to pay any final judgment or agreed settlement arising from claims of malpractice subject to the limits on liability set forth in IC 34-18-4-1(1)(A)(i) and IC 34-18-4-1(1)(A)(ii).

(2) An agreement in writing that the hospital will establish and maintain a claims management and risk management program, which program shall include, at a minimum, the following:

(A) Procedures satisfactory to the commissioner for the prompt investigation of each malpractice claim reported to the hospital to determine:

(i) whether malpractice liability exists; and ~~to determine~~

(ii) its cause.

(B) Procedures for the efficient processing, adjustment, and reasonable settlement of claims.

(C) Procedures for the defense by legal counsel of claims that cannot be adjusted or settled.

(D) Procedures to examine the cause of losses and to take action to reduce their frequency and severity, including a safety program and employee and professional training program.

The hospital may undertake such a claims management and risk management program through its own qualified personnel, or it may undertake part or all of the program through the services of qualified independent contractors.

(3) A verified financial statement that demonstrates the financial resources of the hospital are sufficient to satisfy all malpractice claims incurred by it up to the limits on liability set forth in IC 34-18-4-1(3). Notwithstanding, if the hospital is an agency of any governmental unit and desires to use the taxing power of that governmental unit to establish its financial security, it may establish financial responsibility by filing with the commissioner a copy of an ordinance or resolution of the taxing governing body of the governmental unit, authorizing the hospital to do so, and acknowledging the responsibility of the governmental unit for any judgment or settlement arising from claims of malpractice.

(4) An agreement in writing that if the hospital discontinues operation or decides to purchase insurance to establish financial responsibility under IC 34-18 et seq., the hospital will continue to be liable in the amounts set forth in subdivision (1) until liability ceases to exist.

(5) For each year in which the hospital establishes proof of financial responsibility under this section, the hospital shall obtain the quotation for the surcharge amount to be paid to the patient's compensation fund from IRMIA. In support of this calculation, the hospital shall submit to IRMIA the following:

(A) The hospital's most recent application for licensure to operate a hospital pursuant to IC 16-21-2 on file with the state of Indiana department of health.

(B) Any other information reasonably requested by IRMIA to accurately determine the surcharge amount. This information shall be submitted to IRMIA at least sixty (60) days before the requested effective date of coverage with the patient's compensation fund. IRMIA shall retain this information for a period of ten (10) years.

(6) A hospital that establishes proof of financial responsibility under this section may obtain only occurrence based coverage. Claims made coverage is not available.

(Department of Insurance; Reg 22,Sec V; filed Jan 27, 1977, 2:35 p.m.: Rules and Regs. 1978, p. 515; filed Apr 29, 1999, 2:22 p.m.: 22 IR 2875; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; filed Mar 18, 2005, 10:45 a.m.: 28 IR 2375)

SECTION 5. 760 IAC 1-21-8 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-21-8 Payment into patient's compensation fund; annual surcharge

Authority: IC 34-18-5-4
Affected: IC 27-1-6; IC 27-1-17; IC 27-7-10-14; IC 34-18-5-2; IC 34-18-5-3

Sec. 8. (a) The annual surcharge for ~~a health care~~ **an ancillary** provider shall be one hundred **ten** percent ~~(100%)~~ **(110%)** of the cost to the ~~health care~~ **ancillary** provider for maintenance of financial responsibility.

(b) ~~A health care~~ **An ancillary** provider establishing financial responsibility by means other than insurance under section 3 of this rule shall pay into the patient's compensation fund an amount equal to one hundred **ten** percent ~~(100%)~~ **(110%)** of the premium that would be charged to the ~~health care~~ **ancillary** provider by ~~the residual malpractice insurance authority.~~ **IRMIA.** The payment must be made each year under IC 34-18-5-3 within thirty (30) days after qualification. *(Department of Insurance; Reg 22, Sec VIII; filed Jan 27, 1977, 2:35 p.m.: Rules and Regs. 1978, p. 516; filed Mar 18, 1986, 10:41 a.m.: 9 IR 2057, eff Apr 18, 1986; filed May 28, 1987, 4:00 p.m.: 10 IR 2298; filed Aug 13, 1991, 4:00 p.m.: 15 IR 7; filed Apr 29, 1999, 2:22 p.m.: 22 IR 2875; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; filed Mar 18, 2005, 10:45 a.m.: 28 IR 2376)*

SECTION 6. 760 IAC 1-21-10 IS ADDED TO READ AS FOLLOWS:

760 IAC 1-21-10 Scope of coverage

Authority: IC 34-18-5-4
Affected: IC 16-21-2; IC 34-18-2-24.5; IC 34-18-5-2; IC 34-18-5-3; IC 34-18-5-4

Sec. 10. (a) A hospital's coverage with the patient's compensation fund is limited to facilities identified in the hospital's application for licensure to operate a hospital under IC 16-21-2 as facilities operated under the hospital license. Each hospital shall identify on the surcharge calculation worksheet prescribed by the department all of the facilities operated under the hospital's license and classes of employees intended to be included in the hospital's coverage.

(b) An ancillary provider shall identify in the certificate of coverage prescribed by the department any employed physician and the physician's specialty class as defined at 760 IAC 1-60.

(c) Any health care provider that uses an assumed business name must state the assumed business name on the certificate of coverage filed with the department for the assumed business name to be included in the health care provider's status as a qualified provider as defined by IC 34-18-2-24.5. *(Department of Insurance; 760 IAC 1-21-10; filed Mar 18, 2005, 10:45 a.m.: 28 IR 2376)*

SECTION 7. 760 IAC 1-21-11 IS ADDED TO READ AS FOLLOWS:

760 IAC 1-21-11 Filings by health facilities

Authority: IC 34-18-5-4
Affected: IC 34-18-5-2; IC 34-18-5-3

Sec. 11. (a) A health facility shall submit the following information to the department with its certificate of coverage and surcharge payment:

Number of occupied beds	Type of bed
XX	Skilled Care
XX	Intermediate Care
XX	Residential Care
XX	Independent Living

(b) The following definitions apply throughout this section:

(1) "Independent living" means residents:

(A) are retirement age;

(B) are in general good health;

(C) occupy apartments or dwelling units that normally include cooking facilities;

(D) administer their own medications without assistance; and

(E) do not receive health care services.

(2) "Intermediate care" means residents require nursing care during the day shift, seven (7) days per week, by registered or licensed nurses. No complex nursing care is provided. Complex nursing care consists of functions such as intravenous medications or tube feedings. Assistance is provided with activities of daily living such as the following:

(A) Walking.

(B) Bathing.

(C) Dressing.

(D) Eating.

Some assistance is provided in the administration of medication.

(3) "Residential care" means residents are ambulatory with possible minor medical disorders. A protected environment is provided including meals and planned programs for social or spiritual needs. Incidental health care services are provided, such as medication assistance. A registered nurse may be required to provide consultative services.

(4) "Skilled care" means residents require nursing care during twenty-four (24) hours per day by registered or licensed nurses. Nursing care provided includes some or all of the following:

(A) Medication administration.

(B) Injections.

(C) Tube feedings.

(D) Catherizations *[sic., catheterizations]***.**

(E) Other procedures ordered by a physician.

(Department of Insurance; 760 IAC 1-21-11; filed Mar 18, 2005, 10:45 a.m.: 28 IR 2376)

LSA Document #04-140(F)
Notice of Intent Published: June 1, 2004; 27 IR 2764
Proposed Rule Published: January 1, 2005; 28 IR 1311
Hearing Held: January 23, 2005
Approved by Attorney General: February 18, 2005
Approved by Governor: March 17, 2005
Filed with Secretary of State: March 18, 2005, 10:45 a.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

TITLE 804 BOARD OF REGISTRATION FOR ARCHITECTS AND LANDSCAPE ARCHITECTS

LSA Document #04-156(F)

DIGEST

Amends 804 IAC 1.1-1-1 to revise the definition of valid certificate. Adds 804 IAC 1.1-8 to establish the continuing education requirements for registered architects and landscape architects. Effective 30 days after filing with the secretary of state.

804 IAC 1.1-1-1
804 IAC 1.1-8

SECTION 1. 804 IAC 1.1-1-1 IS AMENDED TO READ AS FOLLOWS:

804 IAC 1.1-1-1 Definitions and abbreviations

Authority: IC 25-4-1-3; IC 25-4-2
Affected: IC 25-4-1-8

Sec. 1. (a) ~~NCARB Appendix A, Circular of Information #1, Table of Equivalents for Education, Training, and Experience will be used by the board as a guide.~~ The following definitions apply throughout this rule:

(1) "Accredited degree program" means a program leading to a professional degree which is accredited by the NAAB or the LAAB or certified equivalent by NCARB or CLARB guidelines.

(2) "Act" means IC 25-4 creating a board to regulate the practice of architecture and the practice of landscape architecture in Indiana.

(3) "Applicant" means an individual whose application has been received by the board for registration as an architect or a landscape architect.

(4) "Approved department, school, or college of architecture or landscape architecture" means a department, school, or college with an architecture or landscape architecture professional degree program recognized by the board at the time of an applicant's graduation.

(5) "Architect" means a person registered under IC 25-4-1 and this article and thereby entitled to use the title architect and engage in the practice of architecture in Indiana.

(6) "A.R.E." means the architect registration examination prepared by NCARB.

(7) "Board" means the board of registration for architects and landscape architects.

(8) "CLARB" means the Council of Landscape Architectural Registration Boards.
(9) "Council record–CLARB" means a detailed, authenticated record of an applicant's activities and accomplishments, factual data of education, training, practice, character, examination, and registration.
(10) "Council record–NCARB" means a detailed, authenticated record of an applicant's education, training, experience, examination, registration, and character. Council record prepared by NCARB.
(11) "Degree in a design discipline", as used in IC 25-4-1-8, means a preprofessional bachelor degree with a major in architecture such as would admit the applicant to an accredited professional master of architecture degree program of four (4) semesters or shorter.
(12) "EESA" means a program approved by NCARB known as Education Evaluation Services for Architects.
(13) "IDP" means Intern Development Program.
(14) "LAAB" means the Landscape Architectural Accreditation Board.
(15) "LARE" means the landscape architect registration examination prepared by CLARB.
(16) "Landscape architect" means a person registered under IC 25-4-2 and this article and thereby entitled to use the title landscape architect and engage in the practice of landscape architecture in Indiana.
(17) "NAAB" means the National Architectural Accrediting Board.
(18) "NCARB" means the National Council of Architectural Registration Boards.
(19) "Professional examination" means the former architects registration examination prepared by NCARB.
(20) "Qualifying test" means the examination formerly prepared by NCARB to qualify applicants without an accredited architectural degree for admission to the professional examination.
(21) "Registrant" means a registered architect or landscape architect, unless the context clearly indicates otherwise, whose qualifications have been examined by the board and a certificate of registration granted.
(22) "Valid certificate **- architect"** means a certificate of registration held by an individual that is current and in good standing. A certificate shall have the effect of a license to practice architecture in Indiana, subject to IC 25-4-1. ~~A certificate shall have the effect of a license to use the title landscape architect in Indiana subject to IC 25-4-1.~~
(23) "Valid certificate – landscape architect" means a certificate of registration held by an individual that is current and in good standing. A certificate shall have the effect of a license to practice landscape architecture in Indiana subject to IC 25-4-2.
~~(23)~~ **(24)** "Week" means a thirty-five (35) hour work week. (No more than thirty-five (35) hours shall be counted toward requirements in any given calendar week.)
~~(24)~~ **(25)** "Year" means fifty (50) calendar weeks not including vacation.

(b) When the masculine pronoun is used, it shall include the feminine. *(Board of Registration for Architects and Landscape Architects; 804 IAC 1.1-1-1; filed Mar 25, 1980, 9:15 a.m.: 3 IR 949; filed Jan 8, 1982, 10:10 a.m.: 5 IR 387; filed Apr 26, 1983, 9:31 a.m.: 6 IR 1075; filed Nov 14, 1985, 8:39 a.m.: 9 IR 752; filed Oct 28, 1998, 3:35 p.m.: 22 IR 756; readopted filed May 10, 2001, 2:40 p.m.: 24 IR 3235; filed Jan 24, 2002, 12:05 p.m.: 25 IR 1903; filed Sep 5, 2003, 8:25 a.m.: 27 IR 180; filed Mar 18, 2005, 10:50 a.m.: 28 IR 2377)*

SECTION 2. 804 IAC 1.1-8 IS ADDED TO READ AS FOLLOWS:

Rule 8. Continuing Education

804 IAC 1.1-8-1 Continuing education
Authority: IC 25-4-1-31; IC 25-4-2-13
Affected: IC 25-4-1; IC 25-4-2

Sec. 1. This rule establishes the continuing education requirements for registered architects and landscape architects. *(Board of Registration for Architects and Landscape Architects; 804 IAC 1.1-8-1; filed Mar 18, 2005, 10:50 a.m.: 28 IR 2378)*

804 IAC 1.1-8-2 Definitions
Authority: IC 25-4-1-31; IC 25-4-2-13
Affected: IC 25-4-1; IC 25-4-2

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Contact hour" means one (1) sixty (60) minute clock hour of an educational activity with no less than fifty (50) minutes of instructional content within the hour.

(c) "Continuing education unit" or "CEU" means the number of continuing education credits, measured in contact hours. The provider of the material or activity may determine the number of CEUs or credits. For the entities listed in section 7(b) of this rule, the board will accept the hours established by each organization. Where the number of CEUs are established by others, the board may require additional evidence supporting the CEUs claimed.

(d) "Health, safety, and welfare" means the planning and designing of buildings and structures and the spaces within and surrounding the buildings and structures that:
(1) minimize the risk of injury to persons or property and comply with applicable building and safety codes;
(2) are durable, environmentally friendly, cost effective, and conserve resources;
(3) are aesthetically appealing;
(4) function properly in all relevant respects; and
(5) enhance the public's overall sense of well-being, harmony, and community and integrate effectively with the surrounding environment.
(Board of Registration for Architects and Landscape Architects;

804 IAC 1.1-8-2; filed Mar 18, 2005, 10:50 a.m.: 28 IR 2378)

804 IAC 1.1-8-3 Continuing education requirements
Authority: IC 25-4-1-31; IC 25-4-2-13
Affected: IC 25-4

Sec. 3. (a) Registered architects and landscape architects must complete during each two (2) year licensure period twenty-four (24) hours of continuing education in order to qualify for renewal of an active license.

(b) Continuing education is first required for the December 1, 2007, renewal.

(c) No credit will be given for courses completed before June 1, 2005. *(Board of Registration for Architects and Landscape Architects; 804 IAC 1.1-8-3; filed Mar 18, 2005, 10:50 a.m.: 28 IR 2379)*

804 IAC 1.1-8-4 First-time registrants exempted
Authority: IC 25-4-1-31; IC 25-4-2-13
Affected: IC 25-4-1; IC 25-4-2

Sec. 4. First-time registrants are not required to comply with these continuing education requirements at the first renewal. *(Board of Registration for Architects and Landscape Architects; 804 IAC 1.1-8-4; filed Mar 18, 2005, 10:50 a.m.: 28 IR 2379)*

804 IAC 1.1-8-5 Waiver of continuing education requirements
Authority: IC 25-4-1-31; IC 25-4-2-13
Affected: IC 25-1-12; IC 25-4-1; IC 25-4-2

Sec. 5. (a) An applicant for license renewal who was unable to fulfill the continuing education requirements in section 3 of this rule may be granted a waiver of the continuing education requirement by the board.

(b) An applicant requesting a waiver of the continuing education requirements in section 3 of this rule must certify under penalty of perjury that the applicant was unable to fulfill the continuing education due to hardship resulting from any of the following:

(1) Service in the armed forces of the United States under IC 25-1-12.
(2) An incapacitating illness or injury.
(3) Other circumstances determined by the board or agency.

(c) An individual who applies for a waiver of the continuing education requirements must request the waiver in writing.

(d) The board may seek verification of the applicant's request for a waiver of continuing education requirements under this rule. *(Board of Registration for Architects and Landscape Architects; 804 IAC 1.1-8-5; filed Mar 18, 2005, 10:50 a.m.: 28 IR 2379)*

804 IAC 1.1-8-6 Continuing education from another jurisdiction
Authority: IC 25-4-1-31; IC 25-4-2-13
Affected: IC 25-4-1; IC 25-4-2

Sec. 6. The board may accept for credit toward the Indiana architect and landscape architect continuing education requirement, courses that are accepted for credit toward the continuing education requirements for architects and landscape architects in another state. *(Board of Registration for Architects and Landscape Architects; 804 IAC 1.1-8-6; filed Mar 18, 2005, 10:50 a.m.: 28 IR 2379)*

804 IAC 1.1-8-7 Mandatory and elective topics
Authority: IC 25-4-1-31; IC 25-4-2-13
Affected: IC 25-4-1; IC 25-4-2

Sec. 7. (a) Credit may be granted for education offerings that cover architecture and landscape architecture and related technical and professional topics and contribute directly to the improvement of the professional knowledge and competence to practice architecture and landscape architecture.

(b) Continuing education activities or courses may be provided by any of the following organizations:

(1) Accredited colleges, universities, or other postsecondary educational institutions.
(2) American Institute of Architects.
(3) American Society of Landscape Architects.
(4) American Planning Association.
(5) Board of Registration for Architects and Landscape Architects.
(6) Council of Landscape Architectural Registration Boards.
(7) Construction Specifications Institute.
(8) National Council of Architectural Registration Boards.
(9) Other related technical or professional societies, organizations, or institutions.

The board shall not preapprove continuing education activities or courses.

(c) At least sixteen (16) hours of the required continuing education requirements for architects and landscape architects must pertain to technical and professional topics related to the protection of the public health, safety, and welfare. These topics include, but are not limited to, the following:

(1) Codes, statutes, and administrative regulations governing the practice of architecture or landscape architecture.
(2) Environmental and ecological resources.
(3) Professional ethics.
(4) Indiana licensing statutes and rules.
(5) Legal aspects of contracts, documents, insurance, bonds, and project administration.

(6) Construction documents and services.
(7) Materials and methods.
(8) Mechanical, plumbing, electrical, and life safety.
(9) Structural technology.
(10) Energy efficiency.
(11) Project administration.
(12) Accessibility issues.
(13) Security and safety issues.
(14) New technical and professional skills.

(d) The following types of activities may qualify to fulfill the requirements for a minimum of sixteen (16) contact hours to be acquired in structured educational activities (all twenty-four (24) hours may be acquired in such activities):
(1) Contact hours in attendance at short courses or seminars dealing with architectural or landscape architectural subjects and sponsored by college or universities.
(2) Contact hours in attendance at presentations on architectural or landscape architectural subjects that are held in conjunction with meetings, conferences, or conventions of architect or landscape architect professional organizations recognized by the board to the extent that contact hours are credited only to that portion of the meeting, conference, or convention that comprises the educational program.
(3) Contact hours in attendance at short courses or seminars relating to professional practice or new technology and offered by colleges, universities, professional organizations, or system suppliers.
(4) Teaching or instructing an architectural or landscape architectural course, seminar, lecture, presentation, or workshop shall constitute three (3) contact hours for each hour spent in the actual presentation. Teaching credit shall be valid for the initial presentation only. A maximum of nine (9) hours may be accumulated over a two (2) year licensure period.
(5) Contact hours spent in architectural or landscape architectural research that is published or is formally presented to the profession or public. A maximum of nine (9) total contact hours may be accumulated over the two (2) year licensure period.
(6) Successfully completing structured architectural or landscape architectural self-study courses, presented by correspondence, Internet, television, video, or audio, ending with an examination or other verification process. The contact hours acquired for this activity shall be established by the program sponsor.
(7) College or university credit courses dealing with architectural or landscape architectural subjects. Each academic semester hour shall equal fifteen (15) contact hours. Each academic quarterly hour shall equal ten (10) contact hours.
(8) Contact hours spent in educational tours of architecturally or landscape architecturally significant projects, where the tour is sponsored by a college, university, professional organization, or system supplier. A maximum of eight (8) total contact hours may be accumulated over the two (2) year licensure period.
(9) Contact hours spent in professional services to the public that draw upon the licensee's professional architectural or landscape architectural expertise on boards and commissions, such as, serving on any of the following:
(A) Planning commissions.
(B) Building code advisory boards.
(C) Urban renewal boards.
(D) Code study committees.
(E) Regulatory boards.
(F) Professional accreditation teams.
A maximum of eight (8) total contact hours may be accumulated over the two (2) year licensure period.

(e) The following types of activities in individually planned educational activities that are self-directed may qualify for the maximum of eight (8) contact hours over the two (2) year licensure period:
(1) Contact hours for serving as an architectural mentor or supervisor for the Intern Development Program (IDP) required to satisfy that diversified professional training requirements under 804 IAC 1.1-7. Such service to an intern or interns shall be consistent with the responsibilities set forth in the NCARB IDP Guidelines for an intern's mentor and supervisor, which is hereby incorporated by reference.
(2) Contact hours spent in planned activities, related to the practice of architecture or landscape architecture, which include the following:
(A) Business and practice efficiency.
(B) Business development.
(C) Personal improvement.
(D) New skills.
(3) Actively participating in a technical or professional society or organization shall be the equivalent to two (2) contact hours. An individual shall serve as an officer or actively participate in a committee of the organization to receive credit for this activity. Contact hours shall be limited to two (2) per organization and shall not be acquired until the completion of each year of service.
(Board of Registration for Architects and Landscape Architects; 804 IAC 1.1-8-7; filed Mar 18, 2005, 10:50 a.m.: 28 IR 2379)

804 IAC 1.1-8-8 Retention of certificates of completion
Authority: IC 25-4-1-31; IC 25-4-2-13
Affected: IC 25-4-1; IC 25-4-2

Sec. 8. Registered architects and landscape architects must retain certificates of completion for continuing education courses for three (3) years after the end of the licensing period for which the continuing education applied. *(Board of Registration for Architects and Landscape Architects; 804 IAC 1.1-8-8; filed Mar 18, 2005, 10:50 a.m.: 28 IR 2380)*

804 IAC 1.1-8-9 No carry over to next license period
Authority: IC 25-4-1-31; IC 25-4-2-13
Affected: IC 25-4-1; IC 25-4-2

Sec. 9. Hours for continuing education units earned in one (1) license period may not be used in a subsequent license period. *(Board of Registration for Architects and Landscape Architects; 804 IAC 1.1-8-9; filed Mar 18, 2005, 10:50 a.m.: 28 IR 2380)*

804 IAC 1.1-8-10 Inactive status

Authority: IC 25-4-1-31; IC 25-4-2-13
Affected: IC 25-4-1; IC 25-4-2

Sec. 10. Registered architects or landscape architects may apply to the board to renew their licenses in an inactive status. No continuing education is required to renew inactive. An inactive registered architect or landscape architect may not practice architecture or landscape architecture while in an inactive status. *(Board of Registration for Architects and Landscape Architects; 804 IAC 1.1-8-10; filed Mar 18, 2005, 10:50 a.m.: 28 IR 2381)*

804 IAC 1.1-8-11 Reactivation of inactive, expired, or retired license

Authority: IC 25-4-1-31; IC 25-4-2-13
Affected: IC 25-4-1; IC 25-4-2

Sec. 11. (a) In order to reactivate an inactive, expired, or retired license, the registered architect or landscape architect must have obtained all twenty-four (24) hours of continuing education units, which would have been required had the license been active.

(b) In order to reactivate an inactive, expired, or retired license during a two (2) year licensure period, the registered architect or landscape architect must:

(1) apply to the board for reactivation on the application form supplied by the board; and

(2) submit evidence of completion of twenty-four (24) CEU hours within the two (2) year period immediately before the date the reactivation application is filed.

(Board of Registration for Architects and Landscape Architects; 804 IAC 1.1-8-11; filed Mar 18, 2005, 10:50 a.m.: 28 IR 2381)

804 IAC 1.1-8-12 Continuing education required after reactivation

Authority: IC 25-4-1-31; IC 25-4-2-13
Affected: IC 25-4-1; IC 25-4-2

Sec. 12. This section applies to all registered architects or landscape architects who reactivate an inactive, expired, or retired license by establishing the number of hours of continuing education required for the time period between reactivation and the following renewal date in order to qualify to renew active. Registered architects or landscape architects must complete the mandatory continuing education required in section 7 of this rule unless the requirement in the table in this section is zero (0). Additional hours of continuing education required in this table may be met by taking courses that meet the requirements of section 7 of this rule.

Date of Activation	Hours Required to Renew Active
January 1 – March 31 of first 12 months of license period	24
April 1- June 30 of first 12 months of license period	21
July 1 – September 30 of first 12 months of license period	18
October 1 – December 31 of first and second months of license period	15
January 1 – March 31 of second 12 months of license period	12
April 1 – June 30 of second 12 months of license period	9
July 1 – September 30 of second 12 months of license period	6
October 1 – December 31 of second 12 months of license period	0

(Board of Registration for Architects and Landscape Architects; 804 IAC 1.1-8-12; filed Mar 18, 2005, 10:50 a.m.: 28 IR 2381)

804 IAC 1.1-8-13 Audits of continuing education compliance

Authority: IC 25-4-1-31; IC 25-4-2-13
Affected: IC 25-1-11; IC 25-4-1-31; IC 25-4-2-13

Sec. 13. (a) The board shall conduct audits of registered architects under IC 25-4-1-31 and landscape architects under IC 25-4-2-13 for continuing education compliance. The board may audit continuing education providers. For purposes of this section, the board may designate a board member or staff member to act on behalf of or in the name of the board.

(b) If, as a result of an audit or other review, the board determines that hours of continuing education units a registered architect or landscape architect has claimed do not meet the continuing education requirements of this article, the board shall notify the registered architect or landscape architect of that determination.

(c) A registered architect or landscape architect, who has been notified under subsection (b), may, within thirty (30) days, submit information to the board giving all the substantive reasons in support of the registered architect's or landscape architect's position that an adequate number of hours of continuing education have been completed.

(d) A registered architect or landscape architect that submits false information shall be subject to sanctions provided for under IC 25-1-11.

(e) Registered architects or landscape architects that are found not to be in compliance shall be subject to discipline under IC 25-1-11. *(Board of Registration for Architects and Landscape Architects; 804 IAC 1.1-8-13; filed Mar 18, 2005, 10:50 a.m.: 28 IR 2381)*

LSA Document #04-156(F)
Notice of Intent Published: July 1, 2004; 27 IR 3099
Proposed Rule Published: December 1, 2004; 28 IR 1054
Hearing Held: January 12, 2005
Approved by Attorney General: February 23, 2005
Approved by Governor: March 17, 2005
Filed with Secretary of State: March 18, 2005, 10:50 a.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

TITLE 820 STATE BOARD OF COSMETOLOGY EXAMINERS

LSA Document #04-254(F)

DIGEST

Amends 820 IAC 4-3-1 to establish the education and examination requirements for an instructor license to allow an instructor licensed under IC 25-8-6, IC 25-8-6.1, or IC 25-8-6.2 to qualify for another instructor license without further instructor education or examination provided the licensed instructor meets licensing and experience requirements and to revise the licensing requirements for an individual teaching manicuring in a cosmetology school. Effective 30 days after filing with the secretary of state.

820 IAC 4-3-1

SECTION 1. 820 IAC 4-3-1 IS AMENDED TO READ AS FOLLOWS:

820 IAC 4-3-1 License
Authority: IC 25-8-3-23
Affected: IC 25-8

Sec. 1. (a) All instructors in cosmetology schools must hold an instructor license issued by the board.

(b) In addition to complying with subsection (a), any individual teaching electrology in a cosmetology school must:
(1) hold an electrologist license issued by the board; and
(2) have practiced electrology in a cosmetology or electrology salon for at least one (1) year.

(c) In addition to complying with subsection (a), any individual teaching esthetics in a cosmetology school must:
(1) hold an esthetician license issued by the board; and
(2) have practiced esthetics in a cosmetology salon or an esthetician salon for at least one (1) year.

(d) Subsection (c)(2) shall not apply to individuals who teach esthetics in a cosmetology school before July 1, 1993.

(e) In addition to complying with subsection (a), any individual teaching manicuring in a cosmetology school must:
(1) hold ~~either~~ a ~~manicurist license or~~ cosmetologist license issued by the board; and
(2) have practiced manicuring in a salon for at least one (1) year.

(f) Notwithstanding subsections (a) through (e), instructor students may instruct other students provided a licensed instructor is present.

(g) Notwithstanding subsections (a) through (e), an individual that:
(1) currently holds a valid cosmetology instructor, electrology instructor, or esthetician instructor license; and
(2) applies for another instructor license;
shall be deemed to have met the education and examination requirements to obtain the additional instructor license.
(State Board of Cosmetology Examiners; 820 IAC 4-3-1; filed Feb 23, 1990, 5:00 p.m.: 13 IR 1408, eff Apr 1, 1990; filed Dec 3, 1991, 11:00 a.m.: 15 IR 575; filed Dec 29, 1998, 10:54 a.m.: 22 IR 1489; filed May 4, 2001, 11:16 a.m.: 24 IR 2687; readopted filed May 22, 2001, 9:56 a.m.: 24 IR 3236; filed Mar 18, 2005, 10:00 a.m.: 28 IR 2382)

LSA Document #04-254(F)
Notice of Intent Published: October 1, 2004; 28 IR 236
Proposed Rule Published: December 1, 2004; 28 IR 1058
Hearing Held: January 10, 2005
Approved by Attorney General: February 23, 2005
Approved by Governor: March 17, 2005
Filed with Secretary of State: March 18, 2005, 10:00 a.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

TITLE 828 STATE BOARD OF DENTISTRY

LSA Document #04-189(F)

DIGEST

Adds 828 IAC 1-5-6 to require that continuing education credit for dentists and dental hygienists must include two hours in ethics, professional responsibility, statutes governing the licensure and practice of dentists and dental hygienists, or administrative rules governing the licensure and practice of dentists and dental hygienists. Effective 30 days after filing with the secretary of state.

828 IAC 1-5-6

SECTION 1. 828 IAC 1-5-6 IS ADDED TO READ AS FOLLOWS:

828 IAC 1-5-6 Continuing education course requirement
Authority: IC 25-13-1-5; IC 25-13-2-10; IC 25-14-1-13; IC 25-14-3-12
Affected: IC 25-13-2-11; IC 25-13-2-12; IC 25-14-3-13; IC 25-14-3-14

Sec. 6. (a) Effective for the license period ending March 1, 2006, for dentists and dental hygienists, and every license period thereafter, continuing education credit must include two (2) hours which shall cover each of the following subjects:

(1) Ethics.

(2) Professional responsibility.

(3) Indiana statutes and Indiana administrative rules governing the licensure and practice of dentists and dental hygienists.

(b) Ethics and professional responsibility means the aspirational standards by which a profession decides to regulate its behavior in order to distinguish what is legitimate or acceptable in pursuit of their aims from what is not.

(c) The two (2) hours required under subsection (a) are not considered courses that relate specifically to the area of practice management. *(State Board of Dentistry; 828 IAC 1-5-6; filed Mar 18, 2005, 10:00 a.m.: 28 IR 2383)*

LSA Document #04-189(F)
Notice of Intent Published: August 1, 2004; 27 IR 3594
Proposed Rule Published: November 1, 2004; 28 IR 669
Hearing Held: December 3, 2004
Approved by Attorney General: February 18, 2005
Approved by Governor: March 17, 2005
Filed with Secretary of State: March 18, 2005, 10:00 a.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

TITLE 848 INDIANA STATE BOARD OF NURSING

LSA Document #04-97(F)

DIGEST

Amends 848 IAC 1-1-6 concerning requirements for licensure by examination. Amends 848 IAC 1-1-7 concerning requirements for licensure by endorsement. Repeals 848 IAC 6. Effective 30 days after filing with the secretary of state.

848 IAC 1-1-6
848 IAC 1-1-7
848 IAC 6

SECTION 1. 848 IAC 1-1-6 IS AMENDED TO READ AS FOLLOWS:

848 IAC 1-1-6 Licensure by examination
Authority: IC 25-23-1-7
Affected: IC 25-23-1-11; IC 25-23-1-12

Sec. 6. (a) Any person who makes application to the board for a license shall submit to the board written evidence, verified by oath, that the registered nurse applicant meets **the requirements of** IC 25-23-1-11 and the licensed practical nurse applicant meets **the requirements of** IC 25-23-1-12.

(b) A copy of a marriage certificate or court order shall be submitted by a candidate who wishes to change her or his name after the application is filed.

(c) Candidates shall present the authorization to test and a photo identification for entrance to the testing center.

(d) The required Indiana passing criteria for the licensure examination is set by the National Council of State Boards of Nursing using the computerized adaptive testing methodology.

(e) An applicant may take the examination at any testing center in the United States approved by the National Council for State Boards of Nursing. An authorization to test must be provided by the Indiana board ~~prior to~~ **before** testing.

(f) Graduates of foreign schools of nursing shall meet the following qualifications before being licensed in Indiana:

(1) Be licensed in the territory or country in which they graduated.

(2) Meet the qualifications required in Indiana as determined by the board.

(3) Obtain the official records from the territory or country in which the applicant graduated verifying academic qualifications or be referred to state accredited nursing programs to establish the necessary credits if the original records are unobtainable.

(4) Show evidence of having passed the examination prepared by the commission on graduates of foreign nursing schools.

(5) Pass the appropriate nurse licensing examination in Indiana.

(g) Requirements for unsuccessful candidates are as follows:

(1) Any candidate who fails the Indiana licensing examination shall not be licensed until she or he has passed the licensing examination.

(2) A complete application shall be submitted each time an examination is taken.

(3) The full examination fee shall be charged for each reexamination.

(4) A candidate who has failed the licensing examination (in any jurisdiction) should undertake a special study program before retaking the examination. This study program may include one (1) or all of the following:

(A) Auditing nursing courses at an approved program in nursing.

(B) **A** self-study program, such as review of course work or professional reading.

(C) Tutoring.

(D) Reenrollment in a state-accredited program of nursing.

(h) Written informed consent from the candidate is necessary before individual licensing examination scores are released to anyone other than the candidate.

(i) Candidates applying for the **practical nursing** licensing examination shall be required to meet the board's curricular requirements for the program in **practical** nursing as stated in the rules in effect at the time of their graduation. **Candidates applying for the registered nursing licensing examination shall be required to meet the board's curricular requirements for the program in registered nursing as stated in the rules in effect at the time of their graduation.**

~~(j) An applicant shall produce evidence of the applicant's primary state of residence. Such evidence shall include a declaration signed by the applicant and the following:~~

~~(1) Either of the following requirements of evidence must be provided:~~

~~(A) Current driver's license with the applicant's home address.~~

~~(B) Other state or federal issued identification card that includes the applicant's home address.~~

~~(2) At least one (1) of the following documents must be provided:~~

~~(A) Voter registration card displaying a home address.~~

~~(B) A federal income tax return declaring the primary state of residence.~~

~~(C) Such other evidence of residence as deemed acceptable by the board.~~

(Indiana State Board of Nursing; Reg 6; filed Mar 1, 1978, 8:51 a.m.: Rules and Regs. 1979, p. 162; filed Mar 18, 1980, 4:00 p.m.: 3 IR 961; filed Feb 18, 1982, 2:18 p.m.: 5 IR 735; filed Mar 29, 1985, 10:43 a.m.: 8 IR 1026; filed Sep 12, 1985, 3:27 p.m.: 9 IR 287; readopted filed Nov 21, 2001, 10:23 a.m.: 25 IR 1326; filed Jun 23, 2003, 4:12 p.m.: 26 IR 3653, eff Jul 1, 2003 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #02-247 was filed Jun 23, 2003.]; filed Mar 16, 2005, 11:50 a.m.: 28 IR 2383)

SECTION 2. 848 IAC 1-1-7 IS AMENDED TO READ AS FOLLOWS:

848 IAC 1-1-7 Licensure by endorsement

Authority: IC 25-23-1-7
Affected: IC 25-23-1-11; IC 25-23-1-12

Sec. 7. (a) An applicant **for licensure as a practical nurse** who was originally licensed by the National Council Licensing Examination (NCLEX®) or ~~an equivalent~~ **the State Board Test Pool** Examination **(SBTPE)** in another jurisdiction will be accepted for registration in Indiana by endorsement from the board that granted the original license if the applicant meets the following qualifications:

(1) Is of good moral character.

(2) Has graduated from:

(A) high school or the equivalent thereof; **and**

~~(3) Has graduated from~~ **(B)** a state approved program in **practical** nursing.

(b) An applicant for licensure as a registered nurse who was originally licensed by the NCLEX® or the SBTPE in another jurisdiction will be accepted for registration in Indiana by endorsement from the board that granted the original license if the applicant meets the following qualifications:

(1) Is of good moral character.

(2) Has graduated from:

(A) high school or the equivalent thereof; and

(B) a state approved program in registered nursing.

~~(b)~~ **(c)** Applicants who are graduates of foreign schools of nursing are eligible for Indiana **practical nursing** licensure by endorsement ~~providing~~ **provided that** the following conditions are met:

(1) Have:

(A) written and passed the ~~National Council Licensing Examination~~ NCLEX® or ~~an equivalent examination~~ **the SBTPE** in another jurisdiction or country; **and**

~~(2) Have~~ **(B)** achieved Indiana's passing scores in all areas.

~~(3)~~ **(2)** Submit:

(A) copies of all scholastic records; **and**

~~(4) Submit~~ **(B)** proof of:

(i) good moral character;

~~(5) Submit proof of~~ **(ii)** high school graduation or equivalent thereof; **and**

~~(6) Submit proof of~~ **(iii)** having graduated from a program **that meets the board's curricular requirements for a program** in **practical** nursing **as stated in the rules in effect at the time of their graduation** with concurrent theory and clinical experience in all areas.

(d) Applicants who are graduates of foreign schools of nursing are eligible for Indiana registered nursing licensure by endorsement provided that the following conditions are met:

(1) Have:

(A) written and passed the NCLEX® or the SBTPE in another jurisdiction or country;

(B) achieved Indiana's passing scores in all areas; and

(C) licensure in another jurisdiction.

(2) Submit:

(A) copies of all scholastic records; and

(B) proof of:

(i) good moral character;

(ii) high school graduation or equivalent thereof; and

(iii) having graduated from a program that meets the board's curricular requirements for a program in registered nursing as stated in the rules in effect at the time of their graduation with concurrent theory and clinical experience in all areas.

~~(c)~~ **(e)** The completed application accompanied by the fee, photograph, and proof of current licensure in another jurisdiction shall be submitted to the Indiana board of nursing. The fee is nonrefundable.

~~(d) An applicant shall produce evidence of the applicant's primary state of residence. Such evidence shall include a declaration signed by the applicant and the following:~~

~~(1) Either of the following requirements of evidence must be provided:~~

~~(A) Current driver's license with the applicant's home address.~~

~~(B) Other state or federal issued identification card that includes the applicant's home address.~~

~~(2) At least one (1) of the following documents must be provided:~~

~~(A) Voter registration card displaying a home address.~~

~~(B) A federal income tax return declaring the primary state of residence.~~

~~(C) Such other evidence of residence as deemed acceptable by the board.~~

(Indiana State Board of Nursing; Reg 7; filed Mar 1, 1978, 8:51 a.m.: Rules and Regs. 1979, p. 165; filed Mar 18, 1980, 4:00 p.m.: 3 IR 963; filed Mar 29, 1985, 10:43 a.m.: 8 IR 1028; readopted filed Nov 21, 2001, 10:23 a.m.: 25 IR 1327; filed Jun 23, 2003, 4:12 p.m.: 26 IR 3654, eff Jul 1, 2003 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #02-247 was filed Jun 23, 2003.]; filed Mar 16, 2005, 11:50 a.m.: 28 IR 2384)

SECTION 3. 848 IAC 6 IS REPEALED.

LSA Document #04-97(F)
Notice of Intent Published: May 1, 2004; 27 IR 2524
Proposed Rule Published: November 1, 2004; 28 IR 674
Hearing Held: December 16, 2004
Approved by Attorney General: February 9, 2005
Approved by Governor: March 10, 2005
Filed with Secretary of State: March 16, 2005, 11:50 a.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

TITLE 856 INDIANA BOARD OF PHARMACY

LSA Document #04-173(F)

DIGEST

Amends 856 IAC 1-30 to revise the standards for the preparation, labeling, and distribution of sterile pharmaceutical products by licensed pharmacists. Effective 30 days after filing with the secretary of state.

856 IAC 1-30-2
856 IAC 1-30-3
856 IAC 1-30-4.1
856 IAC 1-30-4.2
856 IAC 1-30-4.3
856 IAC 1-30-4.4
856 IAC 1-30-4.5
856 IAC 1-30-4.6
856 IAC 1-30-6
856 IAC 1-30-7
856 IAC 1-30-8
856 IAC 1-30-9
856 IAC 1-30-14
856 IAC 1-30-17
856 IAC 1-30-18

SECTION 1. 856 IAC 1-30-2 IS AMENDED TO READ AS FOLLOWS:

856 IAC 1-30-2 "Biological safety cabinet" defined
Authority: IC 25-26-13-4
Affected: IC 25-26-13-18

Sec. 2. As used in this rule, "biological safety cabinet" means a containment unit suitable for the preparation of low to moderate risk agents where there is a need for protection of the product, personnel, and environment, **according to National Sanitation Foundation (NSF) Standard 49.** *(Indiana Board of Pharmacy; 856 IAC 1-30-2; filed Jan 28, 1992, 5:00 p.m.: 15 IR 1017, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-6 was filed Jan 28, 1992.]; readopted filed Nov 13, 2001, 3:55 p.m.: 25 IR 1330; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2385)*

SECTION 2. 856 IAC 1-30-3 IS AMENDED TO READ AS FOLLOWS:

856 IAC 1-30-3 "Class 100 environment" defined
Authority: IC 25-26-13-4
Affected: IC 25-26-13-18

Sec. 3. As used in this rule, "Class 100 environment" means an **ISO class 5** atmospheric environment, which contains less than one hundred (100) particles five-tenths (0.5) microns in diameter per cubic foot of air, **according to the ISO for clean rooms and associated controlled environments.** *(Indiana Board of Pharmacy; 856 IAC 1-30-3; filed Jan 28, 1992, 5:00 p.m.: 15 IR 1017, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-6 was filed Jan 28, 1992.]; readopted filed Nov 13, 2001, 3:55 p.m.: 25 IR 1330; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2385)*

SECTION 3. 856 IAC 1-30-4.1 IS ADDED TO READ AS FOLLOWS:

856 IAC 1-30-4.1 "Hazardous" defined
Authority: IC 25-26-13-4
Affected: IC 25-26-13-18

Sec. 4.1. As used in this rule, "hazardous" means any drug or waste that may:

(1) be:

(A) cytotoxic;

(B) genotoxic;
(C) oncogenic;
(D) mutagenic;
(E) teratogenic; or
(2) otherwise pose a potential health hazard.
(Indiana Board of Pharmacy; 856 IAC 1-30-4.1; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2385)

SECTION 4. 856 IAC 1-30-4.2 IS ADDED TO READ AS FOLLOWS:

856 IAC 1-30-4.2 "ISO" defined
Authority: IC 25-26-13-4
Affected: IC 25-26-13-18

Sec. 4.2. (a) "ISO" means the International Organization for Standardization.

(b) That certain document being titled International Organization for Standardization, as published by the International Organization for Standardization 1, rue de Varembé, Case postale 56 CH-1211 Geneva 20, Switzerland, is hereby incorporated by reference as if fully set out in this rule. *(Indiana Board of Pharmacy; 856 IAC 1-30-4.2; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2386)*

SECTION 5. 856 IAC 1-30-4.3 IS ADDED TO READ AS FOLLOWS:

856 IAC 1-30-4.3 "NSF" defined
Authority: IC 25-26-13-4
Affected: IC 25-26-13-18

Sec. 4.3. (a) "NSF" means the National Sanitation Foundation.

(b) That certain document being titled The Standard for Performance (copyright 2004), as published by the National Sanitation Foundation, P.O. Box 130140, 789 North Dixboro Road, Ann Arbor, Michigan 48113-0140, is hereby incorporated by reference as if fully set out in this rule. *(Indiana Board of Pharmacy; 856 IAC 1-30-4.3; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2386)*

SECTION 6. 856 IAC 1-30-4.4 IS ADDED TO READ AS FOLLOWS:

856 IAC 1-30-4.4 "Parenteral" defined
Authority: IC 25-26-13-4
Affected: IC 25-26-13-18

Sec. 4.4. As used in this rule, "parenteral" means a sterile preparation of drugs for injection through one (1) or more layers of the skin. *(Indiana Board of Pharmacy; 856 IAC 1-30-4.4; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2386)*

SECTION 7. 856 IAC 1-30-4.5 IS ADDED TO READ AS FOLLOWS:

856 IAC 1-30-4.5 "Positive patient outcome" defined
Authority: IC 25-26-13-4
Affected: IC 25-26-13-18

Sec. 4.5. As used in this rule, "positive patient outcome" means the:
(1) cure or prevention of disease;
(2) elimination or reduction of symptoms; or
(3) arresting or slowing of disease process;
so as to improve the patient's quality of life. *(Indiana Board of Pharmacy; 856 IAC 1-30-4.5; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2386)*

SECTION 8. 856 IAC 1-30-4.6 IS ADDED TO READ AS FOLLOWS:

856 IAC 1-30-4.6 "Product quality and characteristics" defined
Authority: IC 25-26-13-4
Affected: IC 25-26-13-18

Sec. 4.6. As used in this rule, "product quality and characteristics" means the following:
(1) Sterility.
(2) Potency associated with environmental quality.
(3) Preparation activities.
(4) Checks and tests.
(Indiana Board of Pharmacy; 856 IAC 1-30-4.6; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2386)

SECTION 9. 856 IAC 1-30-6 IS AMENDED TO READ AS FOLLOWS:

856 IAC 1-30-6 "Sterile pharmaceutical" defined
Authority: IC 25-26-13-4
Affected: IC 25-26-13-18

Sec. 6. As used in this rule, "sterile pharmaceutical" means ~~a~~ **any** dosage form of a drug, **including, but not limited to, parenteral, injectable, and ophthalmic dosage forms, which dose form is** free from living ~~micro-organisms.~~ **microbes and free from chemical or physical contamination.** *(Indiana Board of Pharmacy; 856 IAC 1-30-6; filed Jan 28, 1992, 5:00 p.m.: 15 IR 1017, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-6 was filed Jan 28, 1992.]; readopted filed Nov 13, 2001, 3:55 p.m.: 25 IR 1330; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2386)*

SECTION 10. 856 IAC 1-30-7 IS AMENDED TO READ AS FOLLOWS:

856 IAC 1-30-7 Policy and procedure manual
Authority: IC 25-26-13-4
Affected: IC 25-26-13-18

Sec. 7. Each pharmacy preparing and dispensing, **or holding itself out to prepare or dispense,** sterile pharmaceuticals shall

maintain a policy and procedure manual relating to **the compounding, dispensing, delivery, administration, storage, and use of** sterile **pharmaceutical** products, **pursuant to prescriptions or drug orders, or both,** as part of the pharmacy policy and procedure manual or as a separate policy and procedure manual. This manual shall be available at the pharmacy for inspection by the board or its designated inspector. The manual shall be reviewed annually by the pharmacist-in-charge **or the qualifying pharmacist** and revised if needed. The manual shall include the name of the pharmacist-in-charge of the preparation of sterile pharmaceuticals and policies and procedures for the following:

(1) Clinical services provided.

(2) The handling, storage, disposal, and cleanup of accidental spills of ~~cytotoxic~~ **hazardous** drugs, if they are prepared.

(3) Disposal of unused supplies and drugs.

(4) Drug destruction and returns.

(5) Drug dispensing.

(6) Drug labeling and relabeling.

(7) Drug storage.

(8) Duties and qualifications for professional and nonprofessional staff.

(9) Equipment.

(10) Handling of infectious wastes, if drug products or administration devices are returned to the pharmacy after administration in the case of home administration.

(11) Infusion devices and drug delivery systems, if utilized.

(12) Investigational drugs, if dispensed.

(13) Quality assurance procedures to include the following:

(A) Recall procedures.

(B) Storage and expiration dating.

(C) Educational procedures for professional staff, nonprofessional staff, and **the** patient, if needed, in the case of home administration.

(D) Sterile procedures to include monitoring the temperature of the refrigerator, routine maintenance, and report of hood certification.

(E) Sterility testing or monitoring, if employed, in the case of routine bulk compounding from nonsterile chemicals.

(14) Reference manuals.

(15) Sterile product preparation procedures.

(Indiana Board of Pharmacy; 856 IAC 1-30-7; filed Jan 28, 1992, 5:00 p.m.: 15 IR 1018, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-6 was filed Jan 28, 1992.]; readopted filed Nov 13, 2001, 3:55 p.m.: 25 IR 1330; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2386)

SECTION 11. 856 IAC 1-30-8 IS AMENDED TO READ AS FOLLOWS:

856 IAC 1-30-8 Physical requirements

Authority: IC 25-26-13-4
Affected: IC 25-26-13-18

Sec. 8. (a) A licensed pharmacy preparing sterile pharmaceuticals shall have a designated area for preparing compounded, sterile pharmaceuticals. The designated area shall be restricted to only those personnel authorized for the preparation of sterile pharmaceuticals. This area may be in a separate room or in a portion of a larger room. The area cannot be a warehouse or stockroom setting and must be free of dust and dirt.

(b) The designated preparation area shall be used only for the preparation of sterile pharmaceutical products and related functions.

(c) The licensed pharmacy preparing sterile pharmaceutical products shall have the following equipment:

(1) An environmental control device capable of maintaining at least ~~a~~ **an ISO Class 5** (Class 100) environment in the work space where critical objects are exposed and critical activities are performed. **This device must be capable of maintaining ISO Class 5 (Class 100) conditions during normal activity.** Examples of appropriate devices include **the following:**

(A) Laminar airflow hood. ~~and~~

(B) Zonal laminar flow of high efficiency particulate air (HEPA) filtered air.

(C) Barrier isolators.

(2) A sink with hot and cold running water ~~which~~ **that** is convenient to the compounding area **but outside the buffer area** for the purpose of hand scrubs ~~prior to~~ **before** compounding.

(3) Disposal containers for used needles, syringes, gowns, gloves, etc., and, if applicable, ~~cytotoxic~~ **for hazardous** waste from the preparation of chemotherapy agents and infectious wastes from patients.

(4) Environmental controls including biohazard cabinetry when ~~cytotoxic~~ **hazardous** drug products are prepared.

(5) A refrigerator with a thermometer.

(6) Infusion devices, if appropriate.

(7) Documentation to demonstrate adequate cleaning and sanitizing of the environment along with records of all necessary air sampling for particulates and microorganisms.

(8) Environmental control to maintain an ISO Class 8 (Class 100,000) conditions in the buffer area.

(d) **The pharmacy shall maintain supplies adequate to maintain an environment suitable for the aseptic preparation of sterile products. All expired, recalled, or adulterated and misbranded drug substances must be removed from the restricted area.** The licensed pharmacy preparing sterile pharmaceuticals shall include the following supplies:

(1) Disposable needles, syringes, and other supplies needed for aseptic admixture.

(2) Disinfectant cleaning **tools and** solutions.

(3) **A** hand washing agent with antibacterial action.

(4) Disposable towels or wipes.

(5) Filters and filtration equipment, if utilized.

(6) A ~~cytotoxic~~ **hazardous** drug spill kit shall be available in the facility if ~~cytotoxic~~ **hazardous** drugs are prepared.

(7) Disposable gowns and gloves.

(e) No one may have access to the pharmacy in the absence of the pharmacist, except as stated in ~~856 IAC 1-28-7.~~ **856 IAC 1-28.1-8.**

(f) **The pharmacy shall have sufficient current reference materials related to sterile products to meet the needs of pharmacy.** A pharmacy preparing **or proposing to prepare** sterile pharmaceuticals shall have in its reference library:

(1) the Handbook on Injectable Drugs, published by the American Society of Hospital Pharmacists (ASHP), 4630 Montgomery Avenue, Bethesda, Maryland 20814;

(2) the King's Guide to Parenteral Admixtures, published by Pacemarq Inc., 11701 Borman Drive, St. Louis, Missouri 63146; or

(3) ~~other~~ **another board-approved printed or** electronic database **sufficient** for determining mixing and administration guidelines and drug incompatibilities **such as would be contained in the references listed in subdivision (1) or (2).** ~~in addition to other publications as required in 856 IAC 1-6-2.~~

(g) If the pharmacy is handling or preparing ~~cytotoxic~~ **hazardous** drugs, the pharmacy shall have a **current** copy of Occupational Safety and Health Administration requirements for handling ~~cytotoxic~~ **hazardous** drugs as published ~~in~~ **by the** Occupational Safety and Health Administration, ~~Publication 8-1.1,~~ Office of Occupational Medicine, Directorate of Technical Support, Occupational Safety and Health Administration, U.S. Department of Labor. *(Indiana Board of Pharmacy; 856 IAC 1-30-8; filed Jan 28, 1992, 5:00 p.m.: 15 IR 1018, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-6 was filed Jan 28, 1992.]; errata filed Mar 17, 1992, 10:20 a.m.: 15 IR 1394; readopted filed Nov 13, 2001, 3:55 p.m.: 25 IR 1330; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2387)*

SECTION 12. 856 IAC 1-30-9 IS AMENDED TO READ AS FOLLOWS:

856 IAC 1-30-9 Personnel

Authority: IC 25-26-13-4
Affected: IC 25-26-13-18

Sec. 9. (a) Each pharmacist, **pharmacist intern, pharmacist extern, and pharmacy technician** engaged in preparing sterile pharmaceuticals must be trained in the specialized functions of preparing and dispensing compounded, sterile pharmaceuticals, including the principles of aseptic technique and quality assurance. Documentation of such training or experience shall be made available for inspection by the board or its representatives.

(b) The qualifying pharmacist shall be responsible for the **following:**

(1) Purchasing, storage, compounding, repackaging, dispensing, and distribution of all sterile pharmaceuticals.

~~(c) The qualifying pharmacist shall also be responsible for the~~ **(2)** Development and continuing review of all:

(A) policies and procedures;

(B) training manuals; and

(C) quality assurance programs.

(c) The qualifying pharmacist shall:

(1) assure the environmental control of all products shipped, as controllable by the pharmacist to the extent such aspect of shipping is controllable by the pharmacist; and

(2) be responsible for adherence to all current USP Standards related to sterile compounding, personnel cleansing and gowning; or

(3) reject or cause to be rejected any such shipment or drugs as prepared in violation of applicable USP Standards.

(Indiana Board of Pharmacy; 856 IAC 1-30-9; filed Jan 28, 1992, 5:00 p.m.: 15 IR 1019, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-6 was filed Jan 28, 1992.]; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1337; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2388)

SECTION 13. 856 IAC 1-30-14 IS AMENDED TO READ AS FOLLOWS:

856 IAC 1-30-14 Records and reports

Authority: IC 25-26-13-4
Affected: IC 25-26-13-15; IC 25-26-13-18

Sec. 14. (a) The qualifying pharmacist shall be responsible for such records and reports as required to ensure the patient's health, safety, and welfare. Such records shall be readily available and maintained for two (2) years from the date of issuance of the prescription or drug order and be subject to inspection by the Indiana board of pharmacy or its designated inspector. These records shall include the following:

(1) Patient profile or medication record system.

(2) Policy and procedure manual.

(3) Training manuals.

(4) Policies and procedures for disposal of ~~cytotoxic~~ **hazardous** waste, when applicable.

(b) Information regarding individual patients shall be maintained in a manner to assure confidentiality of the patient's record. Release of this information shall be in accordance with IC 25-26-13-15.

(c) If appropriate, the qualifying pharmacist must document the patient's training and competency in managing this type of therapy provided by the pharmacist to the patient in the home environment. A pharmacist must be involved in the patient training process in any area that related to drug:

(1) compounding;

(2) labeling;

(3) administration;

(4) storage;

(5) stability;
(6) compatibility; or
(7) disposal.

The pharmacist shall be responsible for seeing that the patient's competency in the areas in subdivisions (1) through (7) is reassessed at appropriate intervals. *(Indiana Board of Pharmacy; 856 IAC 1-30-14; filed Jan 28, 1992, 5:00 p.m.: 15 IR 1020, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-6 was filed Jan 28, 1992.]; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1338; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2388)*

SECTION 14. 856 IAC 1-30-17 IS AMENDED TO READ AS FOLLOWS:

856 IAC 1-30-17 Hazardous drugs
Authority: IC 25-26-13-4
Affected: IC 25-26-13-18

Sec. 17. **In addition to the minimum requirements for a pharmacy established by rules of the board,** the following ~~additional~~ requirements are necessary to ensure the protection of the personnel involved in those licensed pharmacies that prepare ~~cytotoxic~~ **hazardous** drugs:

(1) All ~~cytotoxic~~ **hazardous** drugs shall be compounded in a ~~vertical flow,~~ Class II, biological safety cabinet. **If this cabinet is not dedicated solely to the compounding of hazardous drugs, policies and procedures must be in place for the cleaning and decontaminating this biological safety cabinet.**

(2) Protective apparel shall be worn by personnel compounding ~~cytotoxic~~ **hazardous** drugs. This shall include disposable gloves and gowns with tight cuffs.

(3) Appropriate safety and ~~special handling~~ **containment** techniques for compounding ~~cytotoxic~~ **hazardous** drugs shall be used in conjunction with the aseptic techniques required for preparing sterile products.

(4) Procedures for disposal of ~~cytotoxic~~ **hazardous** waste shall be specified within the policy and procedure manual as required by section 7 of this rule **and comply with all applicable local, state, and federal requirements.**

(5) Written procedures for handling both major and minor spills of ~~cytotoxic~~ **hazardous** agents must be developed and included in the policy and procedure manual.

(6) ~~Cytotoxic agents~~ **Prepared doses of hazardous drugs** shall be ~~properly~~ **dispensed and** labeled ~~to identify the need for caution in handling, e.g., "Chemotherapy-Dispose of Properly". If shipped, the outer container must also be properly labeled with the same cautionary statement.~~ **with proper precautions inside and outside and shipped in a manner designed to minimize the risk of accidental rupture of the primary container.**

(Indiana Board of Pharmacy; 856 IAC 1-30-17; filed Jan 28, 1992, 5:00 p.m.: 15 IR 1020, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-6 was filed Jan 28, 1992.]; readopted filed Nov 13, 2001, 3:55 p.m.: 25 IR 1330; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2389)

SECTION 15. 856 IAC 1-30-18 IS AMENDED TO READ AS FOLLOWS:

856 IAC 1-30-18 Quality assurance
Authority: IC 25-26-13-4
Affected: IC 25-26-13-18

Sec. 18. (a) The designated qualifying pharmacist shall conduct a documented, ongoing quality assurance program that monitors personnel performance, equipment, and facilities. Samples of finished products shall be examined, or other continuous monitoring methods shall be used to assure that the pharmacy is capable of consistently preparing sterile pharmaceuticals meeting ~~their~~ specifications **in accordance with good compounding practices and the current USP/NF Chapter on sterile preparation.** Quality assurance procedures shall include the following:

(1) Recall procedures for compounded sterile pharmaceuticals.
(2) Storage and dating for compounded sterile pharmaceuticals.
(3) Sterile procedures, including the following:
(A) Monitoring the temperature of the refrigerator.
(B) Routine maintenance.
(C) Report of laminar flow hood certification.
(4) Written documentation of periodic hood cleaning.

(b) All biological safety cabinets and Class 100 environments shall be certified by an independent contractor or facility specialist as meeting Federal Standard 209B or National Sanitation Foundation Standard 49, as referenced in section 2 of this rule, for operational efficiency. Such certification shall be performed ~~at least annually.~~ **every six (6) months.** Records documenting certification, **which, at a minimum, includes laminar air flow velocity and particle count,** shall be maintained for a period of not less than two (2) years.

(c) Prefilters for the clean air source shall be replaced or cleaned as applicable on a regular basis and the replacement or cleaning date documented.

(d) A vertical flow Class II biological safety cabinet may be used to compound any sterile pharmaceutical product; however, ~~it~~ **the cabinet** must be thoroughly cleaned between each use for ~~cytotoxic~~ **hazardous** and ~~noncytotoxic~~ **nonhazardous** drug compounding.

(e) If manufacturing of parenteral solutions is performed utilizing nonsterile chemicals, extensive end product testing, as referenced in Remington's Pharmaceutical Sciences, published by Mack Publishing Company, Easton, Pennsylvania 18042, or other Federal Drug Administration approved testing methods, must be documented prior to the release of the product from quarantine. This process must include appropriate tests for particulate matter, microbial contamination, and testing for

pyrogens. This does not preclude the extemporaneous compounding of certain sterile pharmaceuticals.

(f) There shall be:

(1) written justification of the chosen expiration dates for compounded parenteral products documented in the policy and procedure manual; **and**

~~(g) There shall be~~ **(2)** documentation of quality assurance audits at planned intervals, including infection control and sterile technique audits.

(Indiana Board of Pharmacy; 856 IAC 1-30-18; filed Jan 28, 1992, 5:00 p.m.: 15 IR 1021, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-6 was filed Jan 28, 1992.]; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1338; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2389)

LSA Document #04-173(F)
Notice of Intent Published: July 1, 2004; 27 IR 3100
Proposed Rule Published: October 1, 2004; 28 IR 317
Hearing Held: November 8, 2004
Approved by Attorney General: March 7, 2005
Approved by Governor: April 5, 2005
Filed with Secretary of State: April 6, 2005, 4:00 p.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

TITLE 865 STATE BOARD OF REGISTRATION FOR LAND SURVEYORS

LSA Document #04-175(F)

DIGEST

Amends 865 IAC 1-11-1 to revise the fees charged and collected by the board. Effective 30 days after filing with the secretary of state.

865 IAC 1-11-1

SECTION 1. 865 IAC 1-11-1, AS AMENDED AT 28 IR 605, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-11-1 Fees charged by board

Authority: IC 25-1-8-2; IC 25-21.5-2-14
Affected: IC 25-21.5

Sec. 1. The board shall charge and collect the following fees, which shall all be nonrefundable and nontransferable:

(1) For review of an application for examination for ~~registration~~ **certification and enrollment** as a land ~~surveyor other than comity, ten~~ **surveyor-in-training, one hundred** dollars ~~($10).~~ **($100).**

(2) For review of an application for examination for registration as a land surveyor, three hundred dollars ($300).

~~(2)~~ **(3)** The fee for the examination or reexamination of any applicant under the Act is the payment of the applicant's cost of purchasing the examination, payable to the examination service.

~~(3)~~ **(4)** For the processing and review of qualifications for registration as a land surveyor by comity, ~~seventy-five~~ **five hundred** dollars ~~($75).~~ **($500).**

~~(4)~~ **(5)** For issuance of the original certificate to practice as a registered land surveyor following passage of the examination or approval for registration on the basis of comity when the certificate is dated between August 1 of an:

(A) odd-numbered year and July 31 of the following even-numbered year, inclusive, fifty dollars ($50); or

(B) even-numbered year and July 31 of the following odd-numbered year, inclusive, one hundred dollars ($100).

~~(5)~~ **(6)** For biennial renewal of the certificate to practice as a registered land surveyor, a renewal fee of one hundred dollars ($100) and a fee of two dollars ($2) for each hour of continuing education required both payable no later than July 31 of each even-numbered year. No fee shall be required to renew a certificate in inactive status under 865 IAC 1-13-13.

~~(6)~~ **(7)** For renewal of an expired certificate to practice as a registered land surveyor, ~~ten~~ **one hundred** dollars ~~($10),~~ **($100),** plus all unpaid renewal fees for the four (4) years of delinquency. A certificate may not be renewed after four (4) years of delinquency.

~~(7)~~ **(8)** For a duplicate or replacement certificate to practice as a registered land surveyor, twenty-five dollars ($25).

~~(8)~~ **(9)** For a replacement pocket card to practice as a registered land surveyor, ten dollars ($10).

~~(9) For enrollment as a land surveyor-in-training, twenty-five dollars ($25).~~

(10) The fee shall be ~~seventy-five~~ **one hundred** dollars ~~($75)~~ **($100)** for the proctoring of examinations taken in this state for purposes of registration in other states. This fee shall be in addition to the examination fee.

(State Board of Registration for Land Surveyors; Rule 12, Sec 1; filed Feb 29, 1980, 3:40 p.m.: 3 IR 637; filed Oct 14, 1981, 1:30 p.m.: 4 IR 2459; filed Oct 17, 1986, 2:20 p.m.: 10 IR 442; errata, 10 IR 445; filed Oct 13, 1992, 5:00 p.m.: 16 IR 884; filed Jun 14, 1996, 3:00 p.m.: 19 IR 3110; filed Nov 20, 2000, 3:01 p.m.: 24 IR 1025; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jul 17, 2002, 3:36 p.m.: 25 IR 4110; filed Sep 16, 2004, 9:00 a.m.: 28 IR 605, eff Nov 1, 2004; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2390) NOTE: 864 IAC 1.1-12-1 was renumbered by Legislative Services Agency as 865 IAC 1-11-1.

LSA Document #04-175(F)
Notice of Intent Published: July 1, 2004; 27 IR 3100
Proposed Rule Published: December 1, 2004; 28 IR 1059
Hearing Held: January 14, 2005
Approved by Attorney General: March 7, 2005
Approved by Governor: April 6, 2005
Filed with Secretary of State: April 6, 2005, 4:00 p.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

TITLE 329 SOLID WASTE MANAGEMENT BOARD

Under IC 4-22-2-38, corrects the following typographical, clerical, or spelling errors in the Indiana Administrative Code, 2005 edition:

(1) In 329 IAC 9-8-13, in the subsection beginning "(c) The commissioner shall instruct", delete "(c)" and insert "(e)".

(2) In 329 IAC 9-8-13, in the subsection beginning "(d) An owner or operator may establish", delete "(d)" and insert "(f)".

Filed with Secretary of State: March 17, 2005, 3:00 p.m.

Under IC 4-22-2-38(g)(2), this correction takes effect 45 days from the date and time filed with the Secretary of State.

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

Under IC 4-22-2-38, corrects the following typographical, clerical, or spelling errors in the Indiana Administrative Code, 2005 edition:

In 410 IAC 6-7.2-29(c), delete "675 IAC 13-2.3" and insert "675 IAC 13-2.4".

Filed with Secretary of State: March 21, 2005, 10:40 a.m.

Under IC 4-22-2-38(g)(2), this correction takes effect 45 days from the date and time filed with the Secretary of State.

Notice of Recall

TITLE 207 CORONERS TRAINING BOARD

LSA Document #04-231

Under IC 4-22-2-40, LSA Document #04-231, printed at 28 IR 624, is recalled.

TITLE 470 DIVISION OF FAMILY AND CHILDREN

LSA Document #04-77

Under IC 4-22-2-41, LSA Document #04-77, printed at 27 IR 2837, is withdrawn.

TITLE 820 STATE BOARD OF COSMETOLOGY EXAMINERS

LSA Document #04-322

Under IC 4-22-2-41, LSA Document #04-322, printed at 28 IR 1200, is withdrawn.

TITLE 52 INDIANA BOARD OF TAX REVIEW

LSA Document #05-54(E)

DIGEST

Temporarily adds provisions establishing procedures to govern proceedings before the Indiana board of tax review with respect to appeals for the 2002 assessment year in Lake County. Authority: HEA 1535, P.L.235-2003; IC 4-22-2-37.1; IC 6-1.1-4-34. Effective March 21, 2005.

SECTION 1. **The purpose of this document is to establish procedures to govern administrative proceedings before the board arising from appeals of assessments of real property in Lake County for the March 1, 2002, assessment date. The definitive procedures, procedural requirements, and evidentiary controls established by this document are deemed essential to assure that the administrative appeals before the board are conducted in the most uniform and objective manner possible.**

SECTION 2. **(a) The provisions of this document apply to and govern all proceedings before the board that arise from appeals of assessments:**

(1) of real property located in Lake County;

(2) completed for the March 1, 2002, assessment date; and

(3) performed by the department of local government finance or the department's authorized contractor pursuant to IC 6-1.1-4-32.

(b) The procedures set forth in 52 IAC 2 apply to petitions filed under IC 6-1.1-15 and do not reflect the unique process of IC 6-1.1-34 (governing appeals from the Lake county reassessment for 2002). However, many of the general rule provisions of 52 IAC 2 are applicable to matters heard under IC 6-1.1-34. Therefore, the definitions and rules found in 52 IAC 2 that are not inconsistent with this document apply to the appeals described in subsection (a). If there is a conflict, the definitions and rules of this document will control.

(c) The provisions of 52 IAC 2-6-6 do not apply to this document.

SECTION 3. **The board shall conduct an impartial review of an appeal from a final assessment decision under IC 6-1.1-4-33(g) issued by the department.**

SECTION 4. **The following definitions apply throughout this document:**

(1) "Appeal petition" means a petition for review of a final assessment decision issued by the department and filed with the board under IC 6-1.1-4-34 on form 139L or such other form as prescribed by the board.

(2) "Contractor" means a firm that entered into a contract with the department to assess property in the county and to conduct informal hearings concerning assessments of real property in the county under IC 6-1.1-4-32 and IC 6-1.1-4-33.

(3) "County" means Lake County, Indiana.

(4) "Department" means the department of local government finance established under IC 6-1.1-30-1.1.

(5) "Final assessment decision" means a final decision issued by the department that serves as notice of a changed reassessment that may be appealed under IC 6-1.1-4-34(c).

(6) "Final order" or "final determination" means any action of the board that is:

(A) designated as final by the board;

(B) the final step in the administrative process before resort may be made to the judiciary; or

(C) subject to appeal to tax court under IC 6-1.1-4-34(m).

(7) "Informal hearing" means the process described in IC 6-1.1-4-33(b).

(8) "Notice of reassessment" means a written notice of the assessed value of real property delivered to the taxpayer by the department pursuant to IC 6-1.1-4-32(f).

(9) "Special master" means a qualified individual designated by the board under IC 6-1.1-4-34(e) to conduct evidentiary hearings and prepare reports in accordance with IC 6-1.1-4-34(g).

SECTION 5. **(a) An appeal petition must be filed with the county assessor within thirty (30) days after the department gives notice of the final assessment decision.**

(b) There is a rebuttable presumption that the final assessment decision is mailed on the date of the final assessment decision.

SECTION 6. **In order to appeal to the board, the taxpayer must:**

(1) request and participate as required in the informal hearing process under IC 6-1.1-4-33 not later than forty-five (45) days after the date of the notice of reassessment;

(2) receive a final assessment decision from the department; and

(3) file an appeal petition with the county assessor not later than thirty (30) days after the notice of the final assessment decision is given to the taxpayer.

SECTION 7. **The hearing shall be scheduled no earlier than thirty (30) days after receipt of the appeal petition unless otherwise agreed by the parties.**

SECTION 8. **(a) Hearings will be conducted by a special master or by a member of the board acting as a special master.**

(b) All testimony shall be under oath or affirmation.

(c) Hearings will be tape-recorded. The recording will

serve as the basis of the official record of the proceeding unless the hearing is transcribed by a court reporter. A party may hire a court reporting service to transcribe the hearing so long as the reporting service is directed to submit an official copy of the transcript to the board at no cost to the board.

(d) The special master may rule on any nonfinal order without the approval of a majority of the board.

(e) In order for a tax representative to participate in the hearing, the tax representative must be certified by the department and follow the rules of 52 IAC 1.

SECTION 9. **(a) Hearings held before a special master shall be held in the county or at such other location as the parties and the designated special master agree.**

(b) Hearings held by a member of the board acting as a special master may be held in the central office.

SECTION 10. **(a) Except as provided in subsection (d), a party participating in the hearing may introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at the informal hearing described in IC 6-1.1-4-33.**

(b) No posthearing submissions will be allowed or accepted unless requested by the board.

(c) The parties shall make available to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) days before the hearing. At the commencement of the hearing, the parties shall make available to the presiding special master a copy of all documentary evidence provided to the other parties.

(d) Failure to comply with subsection (c) may serve as grounds to exclude the evidence.

SECTION 11. **A hearing may be continued only upon a showing of extraordinary circumstances.**

SECTION 12. **(a) The board shall conduct a hearing within the time limits set forth in IC 6-1.1-15-4(f) unless the board extends the time under subsection (c).**

(b) The board shall make a final determination within the time limits set forth in IC 6-1.1-15-4(h) unless the board extends the time under subsection (c).

(c) If, due to the volume of pending appeals, it becomes impracticable to either conduct a hearing or make a final determination within the time frames established by IC 6-1.1-15-4, the board may extend the time frames as necessary.

SECTION 13. **(a) The board shall examine each petition filed under SECTION 5 of this document to determine whether it meets the jurisdictional requirements of IC 6-1.1-4-34(c). The board may establish procedures for such examinations, and the procedures may include orders to submit additional information, telephone conferences to clarify information provided, or other proceedings involving the parties as necessary to determine the events surrounding the taxpayer's filing.**

(b) If a petitioner fails to respond to an order requesting additional information, or if, after the board has completed its examination, it is determined that the petitioner did not meet the jurisdictional requirements set forth in IC 6-1.1-4-34(c), the board shall dismiss the petition.

SECTION 14. **The board may establish procedures to govern the participation of a township assessor or county assessor who wishes to attend or participate in a hearing under IC 6-1.1-4-34(j).**

SECTION 15. **This document readopts the provisions of LSA Document #04-330(E).**

LSA Document #05-54(E)
Filed with Secretary of State: March 21, 2005, 9:30 a.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-61(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 750. Effective April 1, 2005.

SECTION 1. **The name of this scratch-off game is "Scratch-Off Game Number 750, PAC-MAN".**

SECTION 2. **Scratch-off tickets in scratch-off game number 750 shall sell for two dollars ($2) per ticket.**

SECTION 3. **(a) Each scratch-off ticket in scratch-off game number 750 shall contain twenty-two (22) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. Two (2) play symbols and play symbol captions shall appear in the "YOUR NUMBERS" area arranged in pairs representing numbers, pictures, and prize amounts. One (1) play symbol and play symbol caption representing a number shall appear in the area labeled "WINNING NUMBERS".**

(b) The play symbols and play symbol captions, other than those representing prizes and prize amounts, shall consist of the following possible play symbols and play symbol captions:

(1) 1
ONE
(2) 2
TWO
(3) 3
THR
(4) 4
FOR
(5) 5
FIV
(6) 6
SIX
(7) 7
SVN
(8) 8
EGT
(9) 9
NIN
(10) 10
TEN
(11) 11
ELVN
(12) 12
TWLV
(13) 13
THRTN
(14) 14
FORTN
(15) 15
FIFTN
(16) 16
SIXTN
(17) 17
SVNTN
(18) 18
EGHTN
(19) 19
NINTN
(20) 20
TWTY
(21) 
WIN

(c) The play symbols and play symbol caption representing prizes and prize amounts shall consist of the following possible play symbols and play symbol captions:
(1) $1.00
ONE
(2) $2.00
TWO
(3) $3.00
THREE
(4) $4.00
FOUR
(5) $5.00
FIVE
(6) $10.00
TEN
(7) $20.00
TWENTY
(8) $40.00
FORTY
(9) $50.00
FIFTY
(10) $100
ONE HUN
(11) $400
FOUR HUN
(12) $1,000
ONE THOU
(13) $10,000
TEN THOU
(14) 
ARCADE

SECTION 4. **The holder of a ticket in scratch-off game number 750 shall remove the latex material covering the twenty-two (22) play symbols and play symbol captions. If one (1) or more play symbols and play symbol captions in the "YOUR NUMBERS" area match either of the play symbols and play symbol captions in the "WINNING NUMBERS" area, the holder is entitled to the paired prize amounts. If the play symbol and play symbol caption of "**  **" is exposed, the holder automatically wins the paired prize amount. If the play symbol and play symbol caption of "**  **" is exposed, the holder automatically wins a Ms. Pac-Man Arcade Game. The number of matches, prize amounts, and number of winners in scratch-off game number 750 are as follows:**

Number of Matches and Matched Prize Amounts	Total Prize Amount	Approximate Number of Winners
1 – $2.00	$2	315,000
4 – $1.00	$4	120,000
1 – $4.00	$4	120,000
1 – $2.00 + 1 – $3.00	$5	30,000
1 – $5.00	$5	15,000
5 – $2.00	$10	15,000
2 – $5.00	$10	15,000
5 – $1.00 + 1 – $5.00	$10	7,500
1 – $10.00	$10	7,500
10 – $2.00	$20	7,500
5 – $4.00	$20	7,500
1 – $20.00	$20	3,750
8 – $5.00	$40	2,500
4 – $5.00 + 1 – $20.00	$40	2,500
1 – $40.00	$40	2,500
10 – $10.00	$100	1,125
5 – $20.00	$100	1,125

2 – $50.00	**$100**	**1,125**
1 – $100	**$100**	**1,000**
4 – $100	**$400**	**200**
1 – $400	**$400**	**200**
8 – $50	**$400**	**200**
2 – $50.00 + 5 – $100 + 1 – $400	**$1,000**	**45**
1 – $1,000	**$1,000**	**45**
Ms. Pac Man Arcade Game	**$4,692**	**40**
1 – $10,000	**$10,000**	**3**

SECTION 5. **(a) There shall be approximately three million (3,000,000) scratch-off tickets initially available in scratch-off game number 750.**

(b) The odds of winning a prize in scratch-off game number 750 are approximately 1 in 4.44.

(c) All reorders of tickets for scratch-off game number 750 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of one hundred twenty thousand (120,000); and
(3) odds;
as contained in the initial order.

SECTION 6. **The last day to claim a prize in scratch-off game number 750 is March 31, 2006.**

SECTION 7. **This document expires April 30, 2006.**

LSA Document #05-61(E)
Filed with Secretary of State: April 1, 2005, 4:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-62(E)

DIGEST

Temporarily adds rules concerning pull-tab game number 033. Effective April 1, 2005.

SECTION 1. **The name of this pull-tab game is "Pull-Tab Game Number 033, Crazy Bar Bonus".**

SECTION 2. **Pull-tab tickets for pull-tab game number 033 shall sell for one dollar ($1) per ticket.**

SECTION 3. **Pull-tab game number 033 is a criss-cross game.**

SECTION 4. **A pull-tab ticket in pull-tab game number 033 shall contain fifteen (15) play symbols and play symbol captions arranged in a matrix of five (5) rows and three (3) columns. Each row shall be covered by a tab. The play symbols and play symbol captions in pull-tab game number 033 shall consist of the following possible play symbols:**
(1) A picture of a bar with the word crazy on top and the word bonus below
CRAZY BAR BONUS
(2) A picture of three (3) bars
GREEN
(3) A picture of three (3) bars
PURPLE
(4) A picture of two (2) bars
BLACK
(5) A picture of one (1) bar
PINK
(6) A picture of a bar with stars on top and stars on the bottom
STARS
(7) A picture of a gold bar
GOLD
(8) A picture of a group of cherries
CHERRIES
(9) A picture of a lemon
LEMON
(10) A picture of a plum
PLUM

SECTION 5. **A row, column, or diagonal on a pull-tab ticket in pull-tab game number 033 which contains three (3) play symbols in a combination set forth in SECTION 6 of this rule** *[document]* **is not a criss-cross winning combination unless all of the following are true:**
(1) The play symbols and play symbol captions in the line are consistent with those specified in SECTION 4 of this rule *[document]***.**
(2) The three (3) play symbols and play symbol captions in the line are bisected by a blue arrow.
(3) The prize amount appears on the left side of the line in red ink on a yellow box.

SECTION 6. **Subject to SECTION 5 of this rule** *[document]***, the holder of a valid pull-tab ticket for pull-tab game number 033 containing a criss-cross winning combination is entitled to a prize the amount and the approximate number of which are as follows:**

Matching Play Symbol in Criss-Cross Winning Combination	Prize Amount	Approximate Number of Prizes
3 Gold	**$1**	**187,530**
3 Stars	**$2**	**58,938**
3 Pink	**$5**	**26,790**
2 Crazy Bar Bonus + 1 Black	**$10**	**5,358**
2 Crazy Bar Bonus + 1 Purple	**$50**	**2,679**
2 Crazy Bar Bonus + 1 Green	**$100**	**2,679**
2 Crazy Bar Bonus	**$100**	**2,679**

SECTION 7. **A total of approximately one million eight hundred thousand (1,800,000) pull-tab tickets will be initially available for pull-tab game number 033. The odds of winning a prize in pull-tab game 033 are approximately 1 in 6.28. If additional pull-tab tickets are made available for this pull-tab game, the approximate number of each prize shall increase proportionally.**

SECTION 8. **The last day to claim prizes in pull-tab game number 033 shall be sixty (60) days after the end of the game. End of game dates are available at any retailer location, on the commission's Web site at www.hoosierlottery.com, and via the commission's customer service center, which can be contacted toll-free at 1-800-955-6886.**

LSA Document #05-62(E)
Filed with Secretary of State: April 1, 2005, 4:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-63(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 754. Effective April 1, 2005.

SECTION 1. **The name of this scratch-off game is "Scratch-Off Game Number 754, Joker's Wild".**

SECTION 2. **Scratch-off tickets in scratch-off game number 754 shall sell for two dollars ($2) per ticket.**

SECTION 3. **(a) Each scratch-off ticket in scratch-off game number 754 shall contain thirty (30) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. The play symbols and play symbol captions shall be arranged in a matrix of five (5) rows and six (6) columns. The rows in the matrix shall be separate and independent games labeled "HAND 1", "HAND 2", "HAND 3", "HAND 4", and "HAND 5", respectively. Five (5) play symbols and play symbol captions representing playing cards shall appear in each row followed by a box labeled "PRIZE", which shall contain one (1) play symbol and play symbol caption representing a prize amount.**

(b) The play symbols and play symbol captions, other that *[sic., than]* **those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:**

(1)	2 TWO
(2)	3 THR
(3)	4 FOR
(4)	5 FIV
(5)	6 SIX
(6)	7 SVN
(7)	8 EGT
(8)	9 NIN
(9)	10 TEN
(10)	J JCK
(11)	Q QUN
(12)	K KNG
(13)	A ACE

(14) A picture of a joker
JKR

(c) The play symbols and play symbol captions of prize amounts shall consist of the following possible play symbols and play symbol captions:

(1) $1.00
ONE
(2) $2.00
TWO
(3) $4.00
FOUR
(4) $5.00
FIVE
(5) $10.00
TEN
(6) $20.00
TWENTY
(7) $30.00
THIRTY
(8) $40.00
FORTY
(9) $50.00
FIFTY
(10) $100
ONE HUN
(11) $400
FOUR HUN
(12) $500
FIVE HUN
(13) $1,000
ONE THOU
(14) $12,000
TWL THOU

SECTION 4. **(a) The holder of a scratch-off ticket in scratch-off game number 754 shall remove the latex material covering the thirty (30) play symbols and play symbol captions. If two (2) matching play symbols and play symbol captions are exposed in any single row, the holder is entitled to the corresponding prize amount for that row. If three (3) matching play symbols and play symbol captions are exposed in any single row, the holder is entitled to double the corresponding prize amount for that row. If four (4) matching play symbols and play symbol captions are exposed in any single row, the holder is entitled to four (4) times the corresponding prize amount for that row. If the play symbol caption representing a joker card is exposed in any row, it shall be treated as a wild card and can be used to create or add to a match in that row entitling the holder to the corresponding prize multiplied as designated herein.**

(b) The number of winning rows and the associated prize amount play symbols, total prize amounts, and approximate number of winners in scratch-off game number 754 are as follows:

Number of Winning Hands and Play Symbols	Total Prize Amount	Approximate Number of Winners
1 – $2.00	$2	252,000
1 – $4.00	$4	201,600
1 – $1.00 + 1 – $2.00 double	$5	25,200
1 – $5.00	$5	25,200
1 – $5.00 double	$10	12,600
5 – $2.00	$10	12,600
2 – $5.00	$10	6,300
1 – $10.00	$10	6,300
1 – $10.00 double	$20	6,300
1 – $5.00 × 4	$20	3,150
1 – $20.00	$20	3,150
1 – $10.00 × 4	$40	3,150
1 – $40.00	$40	3,150
1 – $50.00	$50	3,150
2 – $50.00	$100	840
1 – $10.00 + 1 – $30.00 + 3 – $20.00	$100	840
1 – $100	$100	840
1 – $100 × 4	$400	420
1 – $400	$400	315
1 – $500 double	$1,000	63
1 – $1,000	$1,000	42
1 – $12,000	$12,000	4

SECTION 5. **(a) There shall be approximately two million five hundred thousand (2,500,000) scratch-off tickets initially available in scratch-off game number 754.**

(b) The odds of winning a prize in scratch-off game number 754 are approximately 1 in 4.44.

(c) All reorders of tickets for scratch-off game number 754 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of one hundred twenty thousand (120,000); and
(3) odds;
as contained in the initial order.

SECTION 6. **The last day to claim a prize in scratch-off game number 754 is March 31, 2006.**

SECTION 7. **This document expires on April 30, 2006.**

LSA Document #05-63(E)
Filed with Secretary of State: April 1, 2005, 4:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-64(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 761. Effective April 1, 2005.

SECTION 1. **The name of this scratch-off game is "Scratch-Off Game Number 761, Jacks in the Box".**

SECTION 2. **Scratch-off tickets in scratch-off game number 761 shall sell for two dollars ($2) per ticket.**

SECTION 3. **(a) Each scratch-off ticket in scratch-off game number 761 shall contain twenty (20) play symbols and play symbol captions in the game play data area arranged in pairs representing cards and prize amounts all concealed under a large spot of latex material.**

(b) The play symbols and play symbol captions in scratch-off game number 761, other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:

(1)	2 TWO
(2)	3 THR
(3)	4 FOR
(4)	5 FIV
(5)	6 SIX
(6)	7 SVN
(7)	8 EGT

(8)	9 NIN
(9)	10 TEN
(10)	J JCK
(11)	Q QUN
(12)	K KNG
(13)	A ACE

(14) A picture of a chest
ALL

(c) The play symbols and play symbol captions representing prize amounts in scratch-off game number 761 shall consist of the following possible play symbols and play symbol captions:

(1) $1.00
ONE
(2) $2.00
TWO
(3) $3.00
THREE
(4) $4.00
FOUR
(5) $5.00
FIVE
(6) $10.00
TEN
(7) $20.00
TWENTY
(8) $40.00
FORTY
(9) $50.00
FIFTY
(10) $100
ONE HUN
(11) $400
FOUR HUN
(12) $1,000
ONE THOU
(13) $10,000
TEN THOU

SECTION 4. **The holder of a ticket in scratch-off game number 761 shall remove the latex material covering the twenty (20) play symbols and play symbol captions. If one (1) or more play symbols and play symbol captions representing a "Jack" is exposed, the holder is entitled to the paired prize amount. If a picture of a "chest" with the caption "ALL" is exposed, the holder is automatically entitled to all the prize amounts. The winning play symbols, prize amounts, and number of winners in scratch-off game number 761 are as follows:**

Winning Prize Symbols	Prize Amount	Approximate Number of Winners
1 – $2.00	$2	300,000
2 – $1.00 + 1 – $2.00 with Jack	$4	180,000
1 – $4.00	$4	60,000
1 – $2.00 with Jack + 1 – 3.00	$5	45,000
1 – $5.00	$5	15,000
10 – $1.00 with chest	$10	22,500
10 – $1.00	$10	7,500
5 – $1.00 + 1 – $5.00	$10	7,500
1 – $10.00	$10	7,500
10 – $2.00 with chest	$20	7,500
5 – $1.00 + 1 – $5.00 with Jack + 1 – $10.00	$20	3,750
1 – $20.00	$20	3,750
10 – $4.00 with chest	$40	4,875
6 – $5.00 + 1 – $10.00 with Jack	$40	2,500
1 – $40.00	$40	2,500
10 – $10.00 with chest	$100	1,500
5 – $20.00	$100	1,000
2 – $25.00 + 1 – 50.00 with Jack	$100	1,000
1 – $100	$100	1,000
9 – $40.00 + 1 – $40.00 with Jack	$400	250
1 – $400	$400	250
4 – $25.00 + 6 – $50.00 with chest	$400	50
10 – $100	$1,000	50
1 – $1,000	$1,000	50
1 – $10,000	$10,000	7

SECTION 5. **(a) There shall be approximately three million (3,000,000) scratch-off tickets initially available in scratch-off game number 761.**

(b) The odds of winning a prize in scratch-off game number 761 are approximately 1 in 4.44.

(c) All reorders of tickets for scratch-off game number 761 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of one hundred twenty thousand (120,000); and
(3) odds;
as contained in the initial order.

SECTION 6. **The last day to claim a prize for scratch-off game number 761 is March 31, 2006.**

SECTION 7. **This document expires April 30, 2006.**

LSA Document #05-64(E)
Filed with Secretary of State: April 1, 2005, 4:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-65(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 752. Effective April 1, 2005.

SECTION 1. **The name of this scratch-off game is "Scratch-Off Game Number 752, Billiards".**

SECTION 2. **Scratch-off tickets in scratch-off game number 752 shall sell for one dollar ($1) per ticket.**

SECTION 3. **(a) Each scratch-off ticket in scratch-off game number 752 shall contain fourteen (14) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. There shall be six (6) separate and independent games labeled "POCKET 1", "POCKET 2", "POCKET 3", "POCKET 4", "POCKET 5", and "POCKET 6", respectively. Each pocket shall contain one (1) play area containing winning symbols labeled "WINNING BALL NUMBERS". Each game shall contain a pair of play symbols and play symbol captions representing numbered billiard balls and prize amounts. The play area labeled "WINNING BALL NUMBERS" shall contain two (2) play symbols and play symbol captions representing numbered billiard balls.**

(b) The play symbols and play symbol captions appearing in the scratch-off game number 752, other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:

(1) 

(2) 

(3) 

(4) 

(5) 

(6) 

(7) 

(8) 

(9) 

(10) 

(11) 

(12)

(13)

(14)

(15)

(c) The play symbols and play symbol captions representing prize amounts in scratch-off game number 752 shalt *[sic., shall]* **consist of the following possible play symbols and play symbol captions:**

(1) $1.00
ONE
(2) $2.00
TWO
(3) $3.00
THREE
(4) $4.00
FOUR
(5) $5.00
FIVE
(6) $10.00
TEN
(7) $20.00
TWENTY
(8) $50.00
FIFTY
(9) $500
FIV HUN
(10) $3,000
THR THOU

SECTION 4. **The holder of a ticket in scratch-off game number 752 shall remove the latex material covering the fourteen (14) play symbols and play symbol captions. If the play symbols and play symbol captions exposed in the "WINNING BALL NUMBERS" play area match any of the play symbols and play symbol captions in "POCKET 1", "POCKET 2", "POCKET 3", "POCKET 4", "POCKET 5", or "POCKET 6", the holder is entitled to the paired prize amount. The number of matched play symbols, associated prize play symbols, total prize amounts, and approximate number of winners are as follows:**

Number of Matched Play Symbols and Associated Prize Play Symbols	Prize Amount	Approximate Number of Winners
1 – $1.00	$1	600,000
1 – $2.00	$2	400,000
1 – $4.00	$4	60,000
2 – $2.00	$4	60,000

1 – $3.00 + 1 – $2.00	**$5**	**20,000**
1 – $5.00	**$5**	**20,000**
1 – $10.00	**$10**	**20,000**
2 – $5.00	**$10**	**40,000**
1 – $20.00	**$20**	**20,000**
1 – $50.00	**$50**	**5,000**
6 – $25.00	**$150**	**1,250**
1 – $500	**$500**	**175**
1 – $3,000	**$3,000**	**8**

SECTION 5. **(a) There shall be approximately six million (6,000,000) scratch-off tickets initially available in scratch-off game number 752.**

(b) The odds of winning a prize in scratch-off game number 752 are approximately 1 in 4.81.

(c) All reorders of tickets for scratch-off game number 752 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of two hundred forty thousand (240,000); and
(3) odds;
as contained in the initial order.

SECTION 6. **The last day to claim a prize in scratch-off game number 752 is March 31, 2006.**

SECTION 7. **This document expires April 30, 2006.**

LSA Document #05-65(E)
Filed with Secretary of State: April 1, 2005, 4:00 p.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #05-44(E)

DIGEST

Temporarily amends 312 IAC 5-8-4, which establishes special watercraft restrictions on the LaPorte County waters of Lake Michigan and Trail Creek, to establish a no-boat zone in an unnamed channel along Trail Creek in Michigan City that holds the Blue Chip Casino to help assure public safety while a new casino vessel is constructed on-site and to protect environmental resources by having reconnection of the channel take place after the conclusion of fish stocking and major spring migrations for fish spawning. Effective March 8, 2005.

SECTION 1. **A person must not operate a watercraft in an unnamed channel that enters the east bank of Trail Creek approximately five hundred (500) feet upstream from the U.S. 12 bridge over Trail Creek in Michigan City.**

SECTION 2. **SECTION 1** *[of this document]* **supercedes 312 IAC 5-8-4(b).**

SECTION 3. LSA Document #04-86(E) IS REPEALED.

SECTION 4. **SECTION 1 and SECTION 2** *[SECTIONS 1 and 2 of this document]* **expire on June 1, 2005.**

LSA Document #05-44(E)
Filed with Secretary of State: March 8, 2005, 11:30 a.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #05-52(E)

DIGEST

Temporarily amends 312 IAC 9-4-11, governing taking and possessing wild turkeys, to prohibit the taking of wild turkeys in designated counties in the spring season and to provide for tagging of the carcass of a wild turkey taken under the "automated point of sale licensing system" authorized by IC 14-22-12-7.5. Effective April 1, 2005.

SECTION 1. **(a) This SECTION is supplemental to 312 IAC 9-4-11.**

(b) A person must not take a wild turkey under this SECTION, from April 27, 2005, through May 15, 2005, in the following locations:
(1) Adams, south of State Road 124.
(2) Blackford.
(3) Delaware.
(4) Grant, east of Interstate 69.
(5) Hancock, east of State Road 9.
(6) Henry.
(7) Huntington, south of State Road 124 and east of Interstate 69.
(8) Jasper, south of State Highway 114, and west of Interstate 65.
(9) Jay.
(10) Newton, south of State Highway 114.
(11) Randolph, north of State Road 32.
(12) Rush, north of State Road 44.
(13) Shelby, east of State Road 9 and north of State Road 44.
(14) Wells, south of State Road 124.
(15) Whitley, south of U.S. 30.

(c) This subsection supercedes 312 IAC 9-4-11(j). Except as provided under IC 14-22-11-1 and IC 14-22-11-11, a person must not hunt wild turkeys unless possessing a completed and signed license bearing the person's name. A

person must not hunt with a wild turkey license issued to another person.

(d) This subsection supercedes 312 IAC 9-4-11(k). The paper described in subsection (e) must, immediately after taking a wild turkey, be marked as to the month and day of the and attached to a leg of the turkey directly above the spur. A person who takes a turkey must cause delivery of the turkey to an official turkey checking station within forty-eight (48) hours of taking for registration. After the checking station operator records the permanent seal number on the log, the person is provided with that seal. The person must immediately and firmly affix the seal to the leg of the turkey directly above the paper. The seal must remain affixed until processing of the turkey begins. The official turkey checking station operator shall accurately and legibly complete all forms provided by the department and make those forms available to department personnel on request.

(e) A person who takes a wild turkey, pursuant to a license issued under IC 14-22-12-7.5, must tag the carcass immediately after taking with a paper that states the name and address of the individual and the date the turkey was taken.

SECTION 2. **SECTION 1 of this document expires May 16, 2005.**

LSA Document #05-52(E)
Filed with Secretary of State: March 16, 2005, 11:30 a.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #05-53(E)

DIGEST

Temporarily amends 312 IAC 5-7-14, which governs the operation of watercraft on the Tippecanoe River in White County and Carroll County, including Lake Shafer and Lake Freeman, to establish a ten-mile-per-hour speed limit on the portion of Lake Shafer and the Tippecanoe River where dredging operations are scheduled to take place within the next year. Effective April 1, 2005.

SECTION 1. **A person must not operate a watercraft in excess of ten (10) miles an hour on Lake Shafer or the Tippecanoe River, Liberty Township, White County, from Lowe's Bridge at County Road 550 North, northeasterly a distance of approximately two thousand five hundred (2,500) feet, and approximately two thousand (2,000) feet south of Lowe's Bridge. This area is at the following locations within Township 28 North, Range 3 West:**

(1) All of Section 32.

(2) The northwest quarter of Section 33.

SECTION 2. **The restrictions set forth in SECTION 1 of this document are in addition to those set forth at 312 IAC 5-7-14.**

SECTION 3. **SECTION 1 and SECTION 2 of this document expire on March 31, 2006.**

LSA Document #05-53(E)
Filed with Secretary of State: March 16, 2005, 11:20 a.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #05-56(E)

DIGEST

Temporarily amends 312 IAC 18-3 of the article pertaining to entomology and plant pathology to regulate the emerald ash borer (Agrilus planipennis) as a pest or pathogen, to provide standards for quarantine in Newbury Township in LaGrange County, which is infested with the species. (This temporary rule is in addition to an emergency rule published as LSA Document #04-307(E) that establishes a quarantine for emerald ash borers in Clay Township and Van Buren Township in LaGrange County and for Jamestown Township and Millgrove Township in Steuben County.) Effective April 1, 2005.

SECTION 1. **(a) Emerald ash borer (Coleoptera: Buprestidae: Agrilus planipennis) is a pest or pathogen and is regulated under this document.**

(b) These terms apply to this document and are in addition to definitions contained in 312 IAC 1 and 312 IAC 18-1:

(1) "Certificate of inspection" means a document issued or authorized to be issued by the state entomologist or the U.S. Department of Agriculture to allow the movement of a regulated article to any destination. A certificate may be in any form approved by the state entomologist or the U.S. Department of Agriculture for this purpose, including a phytosanitary document or multiple use quarantine certificate.

(2) "Compliance agreement" means a written agreement between the department or the U.S. Department of Agriculture and another person that authorizes the movement of regulated articles under this SECTION and other stated conditions.

(3) "Eradication area" means the area including all plants infected by emerald ash borer and any other ash species within one-half (½) mile radius of an infected plant.

(4) "Infested area" means a site where the emerald ash borer is present or where circumstances make it reasonable to believe that the ash borer is present.

(5) "Inspector" means a division inspector or a person authorized by the U.S. Department of Agriculture authorized to enforce this SECTION.

(6) "Move" means to ship, offer for shipment, receive for transportation, transport, carry, or allow to move or to ship.

(c) The following county includes an infested area and is regulated under this document: Newbury Township, LaGrange County.

(d) The following items are regulated articles:
(1) The emerald ash borer in any living stage of development.
(2) Any ash tree (Fraxinus spp.), including nursery stock.
(3) A limb, stump, branch, or debris of at least one (1) inch in diameter of an ash tree.
(4) An ash log, slab, or untreated ash lumber with bark attached.
(5) Composted and noncomposted ash chips and composted and noncomposted ash bark chips at least one (1) inch in diameter.
(6) An article, product, or means of conveyance reasonably determined by the state entomologist to present the risk of spread of the emerald ash borer.
(7) Cut firewood of any nonconiferous species originating from a regulated area.

(e) A person must not move a regulated article outside an infested area except under the following conditions:
(1) An inspector issues a certificate of inspection following a thorough examination of the regulated article and any treatment method. The certificate must be properly supported by a determination by the inspector, or by a grower or shipper authorized to conduct an inspection under a compliance agreement, that no life stage of emerald ash borer is present. A certificate may be conditioned upon the completion of treatments administered under methods approved by the state entomologist or by a United States federal officer authorized by the state entomologist.
(2) A certificate of inspection is attached to any regulated article or to a shipping document that adequately describes the regulated article. The certification must remain attached until the regulated article reaches its destination.

(f) A person must not move a regulated article originating outside an infested area, through a county regulated under subsection (c), without a certificate of inspection for the emerald ash borer, except under the following conditions:
(1) From September 1 through April 30, or when the ambient air temperature is below forty (40) degrees F., if the person does not stop except to refuel or for traffic conditions.
(2) From May 1 through August 31 when the temperature is forty (40) degrees F. or higher if the article is shipped in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by the emerald ash borer.
(3) The point of origin of the regulated article is indicated on the bill of lading or shipping document.
(4) The regulated article is moved within Indiana by approval of the state entomologist for scientific purposes.
(5) The article is not combined or commingled with other articles so as to lose its individual identity.

(g) A regulated article originating outside a regulated area that is moved into a county regulated under subsection (c) and exposed to potential infestation by the emerald ash borer is considered to have originated from a regulated area. A person must not move the regulated article from the regulated area except under subsection (e).

(h) A person must not move a regulated article from an infested area through any nonregulated area to a regulated destination without a certificate of inspection for emerald ash borer, except under the following conditions:
(1) From September 1 through April 30, or when the ambient air temperature is below forty (40) degrees F., if the person does not stop except to refuel or for traffic conditions.
(2) From May 1 through August 31 when the temperature is forty (40) degrees F. or higher, if the article is shipped in an enclosed vehicle or completely enclosed by a covering adequate to prevent the escape of any emerald ash borer.
(3) The county and state of origin and the final destination of the regulated article is indicated on the bill of lading or shipping document.

(i) The bill of lading or shipping document accompanying any shipment of regulated articles in Indiana must indicate the county and state of origin of the regulated articles.

(j) A person who moves a regulated article in violation of this SECTION must move or destroy the article, at the person's or owner's expense, as directed by the state entomologist.

(k) The state entomologist may issue a special permit for the movement of the emerald ash borer into or within Indiana for research purposes. The permit may, by express language, exempt the permit holder from conditions of this document.

(l) Uncomposted ash chips and uncomposted ash bark chips no larger than one (1) inch in diameter are exempted from the requirements of this document.

(m) Any ash species within the eradication area will be removed and rendered incapable of supporting emerald ash borer life stages.

(n) Regulated articles from another infested state or any part of a state infested with emerald ash borer are prohibited entry into Indiana without an accompanying certificate

of inspection or phytosanitary document issued by the U.S. Department of Agriculture or the plant health regulatory agencies of the originating state.

(o) Harvest for timber or other use of the wood of any non-ash forest species within the eradication area is prohibited until after all ash has been removed and the site is released by the state entomologist or his designee.

(p) It is a violation of this SECTION to move ash, in any form, out of the eradication area without a compliance agreement signed by the state entomologist or his designee.

SECTION 2. **SECTION 1 of this document expires February 1, 2006.**

LSA Document #05-56(E)
Filed with Secretary of State: April 1, 2005, 10:30 a.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #05-59(E)

DIGEST

Temporarily amends 312 IAC 5-6, which governs restrictions on the operation of watercraft on public freshwater lakes, to establish a restricted watercraft zone in an area commonly known as "the Prairie" within Lake Manitou, Fulton County. Effective May 1, 2005.

SECTION 1. **(a) This SECTION establishes restrictions on the operation of watercraft on Lake Manitou in Fulton County.**

(b) Except as provided in subsection (c), a person must not operate a watercraft in an area, commonly known as the Prairie, which is enclosed by a line of buoys placed as follows:
(1) SPC 2114199 (UTM 4544799) north and SPC 185587 (UTM 568631) east.
(2) SPC 2114362 (UTM 4544844) north and SPC 184604 (UTM 568331) east.
(3) SPC 2114620 (UTM 4544921) north and SPC 184241 (UTM 568219) east.
(4) SPC 2115391 (UTM 4545156) north and SPC 184259 (UTM 568221) east.
(5) SPC 2115871 (UTM 4545305) north and SPC 184900 (UTM 568414) east.
(6) SPC 2115720 (UTM 4545262) north and SPC 185534 (UTM 568608) east.
(7) SPC 2114303 (UTM 4544831) north and SPC 185670 (UTM 568656) east.

(c) A person is exempted from subsection (b) if each of the following requirements is satisfied:
(1) The watercraft is not a motorboat or is a motorboat that has the motor turned off.
(2) The watercraft is not operated in excess of idle speed.
(3) The watercraft is not anchored.

SECTION 2. **SECTION 1 of this document expires on the earlier of November 1, 2005, or the effective date of LSA Document #04-210.**

LSA Document #05-59(E)
Filed with Secretary of State: March 29, 2005, 10:45 a.m.

Change in Notice of Public Hearing

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #04-234

The Air Pollution Control Board gives notice that the date of the public hearing for consideration of final adoption of LSA Document #04-234, printed at 28 IR 1813, has been changed. The changed Notice of Public Hearing appears below:

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8, and IC 13-14-9, notice is hereby given that on ***June 1, 2005*** *at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on proposed amendments to 326 IAC 6.5-7-13.*

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their view concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Sky Schelle, Rules Development Section, Office of Air Quality, (317) 234-3533 or (800) 451-6027, press 0, and ask for ext. 4-3533 (in Indiana). If the date of this hearing is changed, it will be noticed in the Change in Notice of Public Hearing section of the Indiana Register.

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204

or call (317) 233-0855 or (317) 232-6565 (TDD). Speech and hearing impaired callers may also contact the agency via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East, Indianapolis, Indiana and are open for public inspection.

Kathryn A. Watson, Chief
Air Programs Branch
Office of Air Quality

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #04-299

The Air Pollution Control Board gives notice that the date of the public hearing for consideration of final adoption of LSA Document #04-299, printed at 28 IR 1815, has been changed. The changed Notice of Public Hearing appears below:

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8, and IC 13-14-9, notice is hereby given that on ***June 1, 2005*** *at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on proposed amendments to 326 IAC 1-1-3 and 326 IAC 1-1-3.5.*

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their view concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Gayl Killough, Rules Development Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027, press 0, and ask for ext. 3-8628 (in Indiana). If the date of this hearing is changed, it will be noticed in the Change in Notice of Public Hearing section of the Indiana Register.

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204

or call (317) 233-0855 or (317) 232-6565 (TDD). Speech and hearing impaired callers may also contact the agency via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East, Indianapolis, Indiana and are open for public inspection.

Kathryn A. Watson, Chief
Air Programs Branch
Office of Air Quality

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #05-57

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 312 IAC 3-1-9 that governs defaults, dismissals, and uncontested orders. An administrative law judge is authorized to issue a final order (1) where the parties have tendered an agreed order; or, (2) where an administrative law judge has issued a nonfinal order, that was subject to written objections, but no party has filed timely objections. The secretary of the commission may, however, serve written notice of the intent to review any nonfinal order. Questions or comments may be directed to slucas@nrc.in.gov or by telephone at (317) 233-3322. Statutory authority: IC 4-21.5-3-34; IC 14-10-2-4.

TITLE 315 OFFICE OF ENVIRONMENTAL ADJUDICATION

LSA Document #05-73

Under IC 4-22-2-23, the Office of Environmental Adjudication intends to adopt a rule concerning the following:

OVERVIEW: Under IC 4-21.5-7-7, the Office of Environmental Adjudication intends to amend the rules of procedure for the Office of Environmental Adjudication, 315 IAC 1 et seq. and to correct errata remaining in the rule. Written comments may be submitted to the Office of Environmental Adjudication, Attention: Catherine Gibbs, Indiana Government Center-North, 100 North Senate Avenue, Room N1049, Indianapolis, Indiana 46204 or by electronic mail to cgibbs@oea.state.in.us. Statutory authority: IC 4-21.5-7-7.

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

LSA Document #05-70

Under IC 4-22-2-23, the Indiana State Board of Animal Health intends to adopt a rule concerning the following:

OVERVIEW: The rule will amend 345 IAC 9 and 345 IAC 10 to update federal regulations and other matters incorporated by reference governing the slaughter and processing of livestock and poultry. The rule may authorize a voluntary inspection program for the slaughter of domesticated rabbits and the processing of rabbit products for human consumption. Comments on the proposed rule may be sent to the Indiana State Board of Animal Health, Attention: Legal Affairs, 805 Beachway Drive, Suite 50, Indianapolis, Indiana 46224 or by electronic mail to ghaynes@boah.state.in.us. Statutory authority: IC 15-2.1-3-19.

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

LSA Document #05-74

Under IC 4-22-2-23, the Indiana State Board of Animal Health intends to adopt a rule concerning the following:

OVERVIEW: The rule will establish a state system allocating premises identification numbers for premises associated with certain animals, animal related enterprises, and meat and poultry and dairy products production. The rule will add a requirement that a person obtain a premises identification number prior to buying, selling, or exhibiting certain livestock and require a person holding a livestock exhibition to register the event with the state veterinarian and keep records. Partially effective 30 days after filing with the Secretary of State and partially effective January 1, 2006. Submit questions or comments to the Indiana State Board of Animal Health, Attention: Legal Affairs, 805 Beachway Drive, Suite 50, Indianapolis, Indiana 46224 or by electronic mail to ghaynes@boah.state.in.us. Statutory authority: IC 15-2.1-3-19.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #05-76

Under IC 4-22-2-23, the Office of the Secretary of Family and Social Services intends to adopt a rule concerning the following:

OVERVIEW: Amends 405 IAC 5-24 to revise the Medicaid reimbursement policy for pharmacy services. Statutory authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3.

TITLE 515 PROFESSIONAL STANDARDS BOARD

LSA Document #05-71

Under IC 4-22-2-23, the Professional Standards Board intends to adopt a rule concerning the following:

OVERVIEW: Adds corrections to 515 IAC 8 to provide clarity on certain requirements and procedures for the issuance

by the Indiana Professional Standards Board of the initial practitioner license. Public comments are invited and may be directed to the Indiana Professional Standards Board, 101 W. Ohio Street, Indianapolis, IN 46204. Statutory authority: IC 20-1-1.4-7.

TITLE 515 PROFESSIONAL STANDARDS BOARD

LSA Document #05-72

Under IC 4-22-2-23, the Professional Standards Board intends to adopt a rule concerning the following:

OVERVIEW: Adds changes to 515 IAC 9 to provide clarity on certain requirements and procedures for the issuance of various licenses and permits issued by the Indiana Professional Standards Board. Public comments are invited and may be directed to the Indiana Professional Standards Board, 101 W. Ohio Street, Indianapolis, IN 46204. Statutory authority: IC 20-1-1.4-7.

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

LSA Document #05-58

Under IC 4-22-2-23, the Fire Prevention and Building Safety Commission intends to adopt a rule concerning the following:

OVERVIEW: To adopt and amend the International Energy Conservation Code 2004 Supplement to replace the current Indiana Energy Conservation Code (675 IAC 19-3). Public comments are invited and may be directed to the Department of Fire and Building Services, Attention: Technical Services, Indiana Government Center-South, 402 West Washington Street, Room W246, Indianapolis, Indiana 46204 or by e-mail at jweesner@sema.state.in.us. Statutory authority: IC 22-13-2-2; IC 22-13-2-13.

TITLE 710 SECURITIES DIVISION

LSA Document #05-81

Under IC 4-22-2-23, the Securities Division intends to adopt a rule concerning the following:

OVERVIEW: Adds 710 IAC 1-22 to establish definitions, phrases, and standards for loan brokers. Questions or comments may be directed to Silvia Miller at smiller@sos.state.in.us or by telephone at (317) 234-2741. Statutory authority: IC 23-2-1-15.

TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #05-75

Under IC 4-22-2-23, the Department of Insurance intends to adopt a rule concerning the following:

OVERVIEW: To amend 760 IAC 1-68 regarding the requirements for financial statements, net worth, applications, board of directors, open enrollment, place of business, stop loss coverage, benefits, and renewal of a registration as well as the general requirements for limited service multiple employer welfare arrangements and professional employer organizations. Written comments may be submitted to the Indiana Department of Insurance, Attn: Amy Strati, 311 West Washington Street, Suite 300, Indianapolis, Indiana 46204 or e-mail to astrati@doi.state.in.us. Statutory authority: IC 27-1-34-9.

TITLE 820 STATE BOARD OF COSMETOLOGY EXAMINERS

LSA Document #05-68

Under IC 4-22-2-23, the State Board of Cosmetology Examiners intends to adopt a rule concerning the following:

OVERVIEW: Amends 820 IAC 4-1-7 to require cosmetology schools to retain records that include the final practical demonstration examination grades. Amends 820 IAC 4-1-9 to require cosmetology schools to include in student records each student's final practical demonstration examination grades. Amends 820 IAC 4-1-11 to revise the definition of graduation from a cosmetology school to require that students must take and pass a final practical demonstration examination that addresses the acts that are permitted by license. Amends 820 IAC 4-1-12 to require cosmetology schools to provide the final practical demonstration examination grades on a student's application for licensure. Establishes the requirements and procedures for cosmetology schools to administer the final practical demonstration examination for students. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, Attn.: Board Director, 402 West Washington Street, Room W072, Indianapolis, IN 46204-2700 or via e-mail at pla12@pla.state.in.us. Statutory authority: IC 25-8-3-23; IC 25-8-5-4.

TITLE 820 STATE BOARD OF COSMETOLOGY EXAMINERS

LSA Document #05-69

Under IC 4-22-2-23, the State Board of Cosmetology Examiners intends to adopt a rule concerning the following:

OVERVIEW: Amends 820 IAC 2-2-3 to establish the procedures for examination candidates that fail to pass the state board examinations under IC 25-8 after three years. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, Attn.: Board Director, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, IN 46204-2700 or via e-mail at pla12@pla.state.in.us. Statutory authority: IC 25-8-3-23; IC 25-8-5-4.

TITLE 865 STATE BOARD OF REGISTRATION FOR LAND SURVEYORS

LSA Document #05-82

Under IC 4-22-2-23, the State Board of Registration for Land Surveyors intends to adopt a rule concerning the following:

OVERVIEW: Amends 865 IAC 1-1 to revise the definitions and board meeting scheduling. Amends 865 IAC 1-2 to revise the minimum education and experience requirements established under IC 25-21.5-5-2 for admission to the land surveyor and land surveyor-in-training examination. Amends 865 IAC 1-3-2 concerning students enrolled in an approved land surveying curriculum submitting the SIT examination application to a board designee on the student's campus. Amends 865 IAC 1-4 to update and clarify requirements concerning examinations. Amends 865 IAC 1-5 to revise the standards for comity registration. Amends 865 IAC 1-7 to revise the design, application, and use of the land surveyor seal and to establish the definitions, standards, and requirements for the use of electronic or digital signatures. Amends 865 IAC 1-8-1 to clarify language regarding the payment of renewal fees. Amends 865 IAC 1-9 to require a registrant to identify the address of all the offices that the registrant is in responsible charge of land surveying work and to require a registrant to notify the board of any change in the registrant's address and office address. Revises 865 IAC 1-10-11 and 865 IAC 1-10-12 to update the disclosure of conflicts of interest. Amends 865 IAC 1-12 to revise the standards for the competent practice of land surveying. Amends 865 IAC 1-13 to revise the continuing education requirements for registered land surveyors. Amends 865 IAC 1-14 to revise the requirements for land surveyor continuing education providers. Repeals 865 IAC 1-12-8, 865 IAC 1-12-15, 865 IAC 1-12-16, 865 IAC 1-12-17, 865 IAC 1-12-19, and 865 IAC 1-12-26. Questions or comments concerning the proposed rules may be directed to: State Board of Registration of Land Surveyors, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, IN 46204 or by electronic mail at pla10@pla.state.in.us. Statutory authority: IC 25-21.5-2-14; IC 25-21.5-8-7.

TITLE 872 INDIANA BOARD OF ACCOUNTANCY

LSA Document #05-67

Under IC 4-22-2-23, the Indiana Board of Accountancy intends to adopt a rule concerning the following:

OVERVIEW: Amends 872 IAC 1-6 to revise the requirements and procedures for a quality review program for CPA and PA firms. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, ATTENTION: Board Director, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, Indiana 46204-2700 or by electronic mail at pla11@pla.state.in.us. Statutory authority: IC 25-2.1-2-15; IC 25-2.1-5-8; IC 25-2.1-5-9.

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document #05-14

DIGEST

Amends 312 IAC 16-5-19, governing performance standards and enforcement of plugging and abandoning of oil and gas wells, to allow the use of water as a material for filling uncemented intervals in a plugged well. Effective 30 days after filing with the secretary of state.

312 IAC 16-5-19

SECTION 1. 312 IAC 16-5-19, AS READOPTED AT 28 IR 1315, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 16-5-19 Plugging and abandoning wells
Authority: IC 14-37-3-6
Affected: IC 14-37-8

Sec. 19. (a) Wells for oil and gas purposes shall be plugged in accordance with IC 14-37-8.

(b) With respect to a well for oil and gas purposes, an owner or operator must place bottom plugs using one (1) of the following procedures:

(1) A cement plug from total depth to three (3) feet below ground elevation.

(2) A cement plug from the shallower of total depth of fifty (50) feet below to ~~no~~ **not** less than one hundred (100) feet above each completed zone unless the placement of the plug would require the removal of a permanent plugback and one (1) of the following:

(A) A mechanical plug set inside cemented casing within two hundred (200) feet above the uppermost completed zone with a ten (10) gallon cement plug placed on top of the mechanical plug.

(B) A cement plug from the top of to ~~no~~ **not** less than two hundred fifty (250) feet above the uppermost completed zone.

(3) A mechanical plug between each completed zone unless the placement of the plug would require the removal of a permanent plugback and one (1) of the following:

(A) A mechanical plug set inside cemented casing within two hundred (200) feet above the uppermost completed zone with a ten (10) gallon cement plug placed on top of the mechanical plug.

(B) A cement plug from the top of to ~~no~~ **not** less than two hundred fifty (250) feet above the uppermost completed zone.

(4) A dry hole that does not enter a commercially mineable coal resource may be filled with mud-laden fluid, well cuttings, pea gravel, or crushed rock from the bottom of the hole to fifty (50) feet below the deepest underground source of drinking water. The owner or operator shall place a cement plug from fifty (50) feet below the deepest underground source of drinking water to three (3) feet below the surface.

(5) If a well is flowing at the surface, however, the operator must place plugs under one (1) of the following:

(A) Subdivision (1).

(B) Subdivision (2) and (2)(A).

(C) Subdivision (3) and (3)(A).

(c) An owner or operator must place any top plug as a cement plug from fifty (50) feet below:

(1) the deeper of the lowest commercially mineable coal seam or underground source of drinking water to three (3) feet below ground elevation; or

(2) to ~~no~~ **not** less than one hundred (100) feet above each commercially mineable coal seam, and a cement plug from fifty (50) feet below the deepest underground source of drinking water to three (3) feet below ground elevation.

Notwithstanding ~~subdivision~~ **subdivisions** (1) and ~~subdivision~~ (2), fallback of a top plug may be topped off by surface placement of cement slurry.

(d) Uncemented casing from fifty (50) feet below the deeper of the lowest commercially mineable coal seam or underground source of drinking water to three (3) feet below ground elevation must be:

(1) removed;

(2) ripped; or

(3) cemented in place using a method approved by the division.

(e) Uncemented intervals must be filled with:

(1) pea gravel;

(2) crushed rock;

(3) drilling mud;

(4) gel; or ~~fresh~~

(5) water.

(f) An owner or operator must obtain prior approval from the division for the use of cement. Cement must meet American Petroleum Institute (API) specification 10(A) or American Society for Testing and Materials (ASTM) Specification C150 Standards for Portland cement. If a pozzalan cement mixture is used, the pozzalanic content by volume must not exceed fifty percent (50%).

(g) An owner or operator must obtain prior approval from the division for the use of a mechanical plug. The mechanical plug must meet API specification 11D1.

(h) An owner or operator must place any cement plug using one (1) of the following methods:

(1) Dump bailing on top of a mechanical plug.

(2) Pump and plug or displacement through:

(A) tubing;

(B) coiled tubing; or

(C) drill pipe.

(3) For any well with two (2) or fewer completed zones and circulated casing, surface pumping or bullhead plugging from the uppermost completed zone to three (3) feet below ground elevation.

(i) To ensure the proper plugging of wells, the division may require one (1) or more of the following:

(1) Use of mechanical plugs in nonstatic wells (as defined in 312 IAC 16-1-44.6).

(2) Submission of cement and service company tickets.

(3) Removal of any unauthorized material placed in a hole before plugging.

(4) Sampling and testing of cement plugs.

(j) The division director may authorize the use of alternative plugging materials and methods to achieve any of the following:

(1) To protect human health or safety.

(2) To protect the environment.

(3) To prevent unreasonably detrimental effects upon fish, wildlife, or botanical resources.

(4) To avoid unreasonable efforts to remove obstructions below the deepest underground source of drinking water.

An owner or operator must obtain prior approval from the division director before using an alternative material or method.

(k) Except as provided in subsection (l) or (m), an owner or operator must not plug a well unless a division representative is present to witness the plugging. If a well is plugged without a division representative present to witness the plugging, the owner or operator may be required by the division director to drill out and plug the well in the presence of a division representative.

(l) If an owner or operator and a division representative have scheduled the plugging of a well, but a division representative is not present at the scheduled time or place, the owner or operator may plug the well in the absence of a division representative only after making a reasonable attempt to have another division representative present to witness the plugging. If a division representative did not witness the plugging, the owner or operator may seek approval for the plugging from the division director under a Special Plugging Affidavit. To qualify for approval of a Special Plugging Affidavit, the owner or operator must do the following:

(1) Provide a confirmation number to establish that the plugging was scheduled with the division.

(2) Demonstrate that a reasonable attempt was made to have another division representative present to witness the plugging.

(3) Submit a cement ticket that identifies the well and shows the amount of cement delivered.

(4) Submit the completed Special Plugging Affidavit.

(m) If a well was plugged by a former owner or operator before the effective date of this section and a division representative was not present to witness the plugging, the owner or operator shall request the approval of a Special Plugging Affidavit from the division director. To qualify for a Special Plugging Affidavit under this subsection, the owner or operator must submit the following:

(1) A cement ticket that identifies the well and shows the amount of cement delivered.

(2) The completed Special Plugging Affidavit.

(n) The owner or operator must submit a report of each permanent plugback on a form approved by the division.

(o) A plugging and abandonment report must be signed by the following persons:

(1) The owner or operator or an authorized agent for the owner or operator.

(2) The person who supplied or prepared the cement.

(3) The division representative who witnessed the plugging.

(4) The division employee who reviewed the information contained in the report.

(p) Within six (6) months after plugging a well, the owner or operator must perform the following acts:

(1) Cut off and remove all casing from three (3) feet below ground elevation to the surface.

(2) Remove substructures.

(3) Clear the well site of refuse and equipment.

(4) Remove and properly dispose of waste fluids from the well site.

(5) Fill all excavations at the well site.

(6) Restore the well site as nearly as practicable to its condition before drilling.

(7) If necessary, initiate a cleanup at the well site under sections 24 through 29 of this rule.

(q) In addition to the requirements of subsection (p), the owner or operator must, within six (6) months after the plugging of the last well on the lease, perform the following acts:

(1) Remove and properly dispose of waste fluids.

(2) Remove the tank battery from the lease.

(3) Clear the lease of refuse and equipment.

(4) Fill all excavations.

(5) Restore the tank battery and excavation site as nearly as practicable to its condition before operation.

(6) If necessary, initiate a cleanup of the tank battery and excavation site under sections 24 through 29 of this rule.

(r) The owner of surface rights may, with the consent of the owner or operator, accept responsibility for either or both of the following, by so indicating on the division's well completion form:

(1) Equipment, fixtures, or excavations placed with respect to a well drilled for oil and gas purposes.

(2) A well plugged up to a zone containing fresh water.

If the owner of surface rights accepts responsibility under this subsection, the owner or operator and its agents are released from responsibility for those items for which the owner of surface rights accepts responsibility. *(Natural Resources Commission; 312 IAC 16-5-19; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2344; filed Aug 6, 2004, 12:00 p.m.: 27 IR 3882; readopted filed Nov 17, 2004, 11:00 a.m.: 28 IR 1315)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on May 26, 2005 at 9:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W272, Indianapolis, Indiana the Natural Resources Commission will hold a public hearing on a proposed amendment to 312 IAC 16-5-19, governing performance standards and enforcement of plugging and abandoning of oil and gas wells, to allow the use of water as a material for filling uncemented intervals in a plugged well. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Michael Kiley
Chairman
Natural Resources Commission

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document #05-18

DIGEST

Amends 312 IAC 8, which governs the public use of DNR properties, to clarify that the DNR's issuance of a lease, license, or concession does not disqualify an area from administration as a "DNR property", to remove the general prohibition on leaving vehicles, watercraft, and other equipment in a DNR parking lot in excess of 48 hours, though this prohibition or a similar prohibition may still be established by signage at specified parking lots, to clarify the permit possession requirements on fish and wildlife areas and on reservoir properties, and to make other technical changes. Effective January 1, 2006.

312 IAC 8-1-4
312 IAC 8-2-3
312 IAC 8-2-8

SECTION 1. 312 IAC 8-1-4, AS READOPTED AT 28 IR 1315, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 8-1-4 Definitions

Authority: IC 14-10-2-4; IC 14-11-2-1
Affected: IC 9-13-2-196; IC 9-25-2-4; IC 14-8-2-261; IC 14-16-1-3; IC 14-31-1

Sec. 4. The following definitions are supplemental to those set forth at 312 IAC 1 and apply throughout this article:

(1) "Authorized representative" means the director or another person designated by the director.

(2) "Berry" means the fruiting body of **the following:**

(A) A blackberry.
(B) A blueberry.
(C) A dewberry.
(D) An elderberry.
(E) A gooseberry.
(F) A huckleberry.
(G) A mulberry.
(H) A raspberry.
(I) A serviceberry. ~~and~~
(J) A strawberry.

(3) "DNR property" means land and water owned, licensed, leased, or dedicated under IC 14-31-1, or under easement to the state or managed by the department. The following areas are, however, exempted from the term:

(A) Public freshwater lakes.
(B) Navigable waterways.
(C) Buildings and grounds (other than those of the Indiana state museum) not located at recreational, natural, or historic sites.

An area is not exempted because the department has issued a lease, license, or concession to another person.

(4) "Fallen cone" means the fruiting body of a coniferous tree that is no longer attached to a living tree.

(5) "Firearm or bow and arrows" means:

(A) a firearm;
(B) an air gun;
(C) a CO_2 gun;
(D) a spear gun;
(E) a bow and arrows;
(F) a crossbow;
(G) a paint gun; or
(H) a similar mechanical device;

that can be discharged and is capable of causing injury or death to a person or an animal or damage to property.

(6) "Fruit" means the fruiting body of **the following:**

(A) Cherries.
(B) Grapes.
(C) Apples.
(D) Hawthorns.
(E) Persimmons.
(F) Plums.
(G) Pears.
(H) Pawpaws. ~~and~~
(I) Roses.

(7) "Greens" means the aboveground shoots or leaves of **the following:**

(A) Asparagus.
(B) Dandelion.
(C) Mustard.
(D) Plantain. ~~and~~

(E) Poke.

(8) "Group boat dock" means an artificial basin or enclosure for the reception of watercraft that is owned and maintained by adjacent landowners for their private usage.

(9) "Leaf" means the leaf of a woody plant for use in a leaf collection or similar academic project.

(10) "License" means:

(A) a license;

(B) a permit;

(C) an agreement;

(D) a contract;

(E) a lease;

(F) a certificate; or

(G) **any** other form of approval;

issued by the department. A license may authorize an activity otherwise prohibited by this rule.

(11) "Mushroom" means edible fungi.

(12) "Nut" means the seeds of **the following:**

(A) Hazelnuts.

(B) Hickories.

(C) Oaks.

(D) Pecans. ~~and~~

(E) Walnuts.

(13) "Off-road vehicle" has the meaning set forth in IC 14-16-1-3.

(14) "Public road" means a public highway under IC 9-25-2-4 that is designated by the department for use by the public.

(15) "Recreation area" means an area that is managed by the department for specific recreation activities.

(16) "Snowmobile" has the meaning set forth in IC 14-8-2-261.

(17) "Vehicle" has the meaning set forth in IC 9-13-2-196(d).

(Natural Resources Commission; 312 IAC 8-1-4; filed Oct 28, 1998, 3:32 p.m.: 22 IR 738, eff Jan 1, 1999; filed Nov 5, 1999, 10:14 a.m.: 23 IR 552, eff Jan 1, 2000; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1544; filed Jun 17, 2002, 4:13 p.m.: 25 IR 3713; filed Sep 19, 2003, 8:14 a.m.: 27 IR 455; readopted filed Nov 17, 2004, 11:00 a.m.: 28 IR 1315)

SECTION 2. 312 IAC 8-2-3, AS READOPTED AT 28 IR 1315, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 8-2-3 Firearms, hunting, and trapping

Authority: IC 14-10-2-4; IC 14-11-2-1
Affected: IC 14-22-11-1

Sec. 3. (a) A person must not possess a firearm or bow and arrows on a DNR property unless one (1) of the following conditions apply:

(1) The firearm or bow and arrows are:

(A) unloaded and unnocked; and

(B) placed in a case or locked within a vehicle.

(2) The firearm or bow and arrows are possessed at, and of a type designated for usage on:

(A) a rifle;

(B) a pistol;

(C) a shotgun; or

(D) an archery;

range.

(3) The firearm or bow and arrows are being used in the lawful pursuit of either **of the following:**

(A) A wild animal on a DNR property authorized for that purpose. ~~or~~

(B) A groundhog as authorized under a license.

(b) Except as provided in subsection (a)(1), a firearm or bow and arrows may not be possessed on DNR properties within **any of the following:**

(1) A nature preserve unless hunting is authorized under subsection (c).

(2) A property administered by the division of museums and historic sites.

(3) A campground.

(4) A picnic area.

(5) A beach.

(6) A service area.

(7) A headquarters building.

(8) A hunter check station. ~~or~~

(9) A developed recreation site.

(c) A person may hunt on a state forest administered by the division of forestry, a reservoir administered by the division of state parks and reservoirs, or a wildlife area administered by the division of fish and wildlife. A person using any of these areas must do the following:

(1) Comply with all federal and state hunting, trapping, and firearms laws.

(2) On a fish and wildlife area and a reservoir property, obtain a one (1) day hunting permit and record from a checking station. The person must: ~~obtain~~

(A) retain the permit and record while in the field for the authorized date; and ~~must,~~

(B) as directed, return them to the department.

(3) Refrain from hunting on a nature preserve if prohibited by signage posted at the site.

(d) Unless otherwise posted or designated on a property map, a person must not place a trap except as authorized by a license issued for a property by an authorized representative. This license is in addition to the licensing requirement for traps set forth in IC 14-22-11-1.

(e) A person must not run dogs, except:

(1) during the lawful pursuit of wild animals; or

(2) as authorized by a license for field trials or in a designated training area.

A property administered by the division of fish and wildlife may be designated for training purposes without requiring a field trial permit. Only dogs may be used during field trials on a DNR property, except where authorized by a license on a fish and wildlife property.

(f) Unless otherwise designated, a person must not discharge a firearm or bow and arrows within two hundred (200) feet of ~~a.~~ **any of the following:**
(1) **A** campsite.
(2) **A** boat dock.
(3) **A** launching ramp.
(4) **A** picnic area. ~~or~~
(5) **A** bridge.

(g) A person must not leave a portable tree blind or duck blind unattended except for the period authorized by ~~312 IAC 9-3-2(j).~~ **312 IAC 9-3-2(l).**

(h) The following terms apply to the use of shooting ranges:
(1) A person must not use a shooting range unless the person is:
(A) at least eighteen (18) years of age; or
(B) accompanied by a person who is at least eighteen (18) years of age.
(2) A person must:
(A) register with the department; **and**
(B) pay any applicable fees;
before using a shooting range.
(3) A person must shoot only at paper targets placed on target holders provided by the department. All firing must be downrange with reasonable care taken to assure any projectile is stopped by the range backstop.
(4) Shot no larger than size ~~six~~ 6 must be used on a shotgun range.
(5) A person must not:
(A) discharge a firearm using automatic fire;
~~(6) A person must not~~ **(B)** use tracer, armor-piercing, or incendiary rounds;
~~(7) A person must not~~ **(C)** play on, climb on, walk on, or shoot into or from the side berms; **or**
~~(8) A person must not~~ **(D)** shoot at clay pigeons, except on a site designated for shooting clay pigeons.
Glass and other forms of breakable targets must not be used on a shooting range.
~~(9)~~ **(6)** A person must dispose of the targets used by the person under section 2(a) of this rule.
~~(10)~~ **(7)** Permission must be obtained from the department in advance for a shooting event that involves any of the following:
(A) An entry fee.
(B) Competition for **any of the following:**
(i) Cash.
(ii) Awards.
(iii) Trophies.
(iv) Citations. ~~or~~
(v) Prizes.
(C) The exclusive use of the range or facilities.
(D) A portion of the event occurring between sunset and sunrise.
(11) On a field course, signs and markers must be staked. Trees must not be marked or damaged.

(i) A person must not take a reptile or amphibian unless the person is issued a scientific collector license under 312 IAC 9-10-6. Exempted from this subsection are:
(1) turtles taken under 312 IAC 9-5-2; and
(2) frogs taken under 312 IAC 9-5-3;
from a DNR property where hunting or fishing is authorized. *(Natural Resources Commission; 312 IAC 8-2-3; filed Oct 28, 1998, 3:32 p.m.: 22 IR 739, eff Jan 1, 1999; filed Nov 5, 1999, 10:14 a.m.: 23 IR 553, eff Jan 1, 2000; filed Jun 17, 2002, 4:13 p.m.: 25 IR 3714; filed Sep 19, 2003, 8:14 a.m.: 27 IR 456; readopted filed Nov 17, 2004, 11:00 a.m.: 28 IR 1315)*

SECTION 3. 312 IAC 8-2-8, AS READOPTED AT 28 IR 1315, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 8-2-8 Vehicles, trails, watercraft, and aircraft
Authority: IC 14-10-2-4; IC 14-11-2-1
Affected: IC 14-22-11-1

Sec. 8. (a) A person must not operate a vehicle:
(1) at a speed greater than:
(A) thirty (30) miles per hour on straight, open stretches of road; or
(B) fifteen (15) miles per hour on steep grades, curves, or where posted; or
(2) other than on a public road.

(b) A person must not park:
(1) a vehicle;
(2) watercraft; or
(3) associated equipment;
except at a site designated by the department.

(c) A person moving cross-country on a trail must remain on the designated pathway for the trail. A person must not:
(1) hike;
(2) bike;
(3) ski;
(4) horseback ride; or
(5) operate an off-road vehicle or snowmobile;
except on a trail designated for the purpose. A person must not ride, lead, drive, or hitch an animal, except where designated by the department.

(d) A person must not operate or maintain a watercraft on a lake:
(1) containing fewer than three hundred (300) acres unless powered only by an electric trolling motor with not more than:
(A) two (2) 12-volt **batteries;** or
(B) one (1) 24-volt battery;
(2) except under motor horsepower and speed zone requirements applicable to the lake; and
(3) for fourteen (14) consecutive days without removal from

the lake unless otherwise moored in a designated area.

(e) A person must not launch, dock, or moor a watercraft or another floating device, except for approved periods and at sites designated by the department for those purposes. A person must not:

(1) leave a watercraft unattended in a courtesy dock provided by the department; ~~A person must not~~ **or**

(2) moor a watercraft at a designated group dock or mooring post unless the watercraft exhibits a valid mooring permit.

(f) A person must not leave a vehicle, watercraft, or associated equipment at a ~~public access site or a public fishing area~~ **DNR property** unless the person is actively engaged in the use of:

(1) a DNR property; or

(2) an adjacent:

(A) public freshwater lake; or

(B) navigable waterway.

~~(g) A person must not leave a vehicle, watercraft, or associated equipment in a public parking lot for longer than forty-eight (48) hours.~~

~~(h)~~ **(g)** A person must not land, taxi, take-off, park, or moor:

(1) an aircraft;

(2) a hang glider;

(3) an ultralite;

(4) a powered model aircraft; or

(5) a hot air balloon;

except at a site designated for that purpose or pursuant to a license. *(Natural Resources Commission; 312 IAC 8-2-8; filed Oct 28, 1998, 3:32 p.m.: 22 IR 741, eff Jan 1, 1999; filed Nov 5, 1999, 10:14 a.m.: 23 IR 555, eff Jan 1, 2000; filed Jun 17, 2002, 4:13 p.m.: 25 IR 3715; readopted filed Nov 17, 2004, 11:00 a.m.: 28 IR 1315)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on May 24, 2005 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W272, Indianapolis, Indiana the Natural Resources Commission will hold a public hearing on proposed amendments to 312 IAC 8, which governs the public use of DNR properties, to clarify that the DNR's issuance of a lease, license, or concession does not disqualify an area from administration as a "DNR property", to remove the general prohibition on leaving vehicles, watercraft, and other equipment in a DNR parking lot in excess of 48 hours, though this prohibition or a similar prohibition may still be established by signage at specified parking lots, to clarify the permit possession requirements on fish and wildlife areas and on reservoir properties, and to make other technical changes. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Michael Kiley
Chairman
Natural Resources Commission

TITLE 655 BOARD OF FIREFIGHTING PERSONNEL STANDARDS AND EDUCATION

Proposed Rule
LSA Document #04-297

DIGEST

Amends 655 IAC 1-1-5.1 and adds 655 IAC 1-2.1-111 through 655 IAC 1-2.1-115 to add certifications for National Incident Management System-First Responder certifications and make conforming section changes. Effective 30 days after filing with the secretary of state.

655 IAC 1-1-5.1	**655 IAC 1-2.1-113**
655 IAC 1-2.1-111	**655 IAC 1-2.1-114**
655 IAC 1-2.1-112	**655 IAC 1-2.1-115**

SECTION 1. 655 IAC 1-1-5.1, PROPOSED TO BE AMENDED AT 28 IR 1009, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-1-5.1 Certifications under this rule; requirements

Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 5.1. (a) Any Indiana fire service person may enter the voluntary certification program by submitting an application and verification by competency based testing for the certification sought. Applications shall be **as follows:**

(1) Legibly signed by the authorized instructor who has taken responsibility for the verified competencies.

(2) Legibly completed in full. ~~and~~

(3) Provided by the board upon request.

(b) Any Indiana nonfire service person may enter the voluntary certification program by submitting an application and verification by competency based testing for the certification sought. Applications shall be **as follows:**

(1) Legibly signed by the authorized instructor who has taken responsibility for the verified competencies.

(2) Legibly completed in full. ~~and~~

(3) Provided by the board upon request.

(c) Certifications are available for the following:

(1) Fire service person as follows:

Certification	Requirements
Basic Firefighter	655 IAC 1-2.1-2 and 655 IAC 1-2.1-3
Firefighter I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-4
Firefighter II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-5
Driver/Operator-Pumper	655 IAC 1-2.1-2 and 655 IAC 1-2.1-6
Driver/Operator-Aerial	655 IAC 1-2.1-2 and 655 IAC 1-2.1-6.1
Driver/Operator-Wildland Fire Apparatus	655 IAC 1-2.1-2 and 655 IAC 1-2.1-6.2
Driver/Operator-Aircraft Crash and Rescue	655 IAC 1-2.1-2 and 655 IAC 1-2.1-6.3
Driver/Operator-Mobile Water Supply	655 IAC 1-2.1-2 and 655 IAC 1-2.1-6.4
Airport Firefighter-Aircraft Crash and Rescue	655 IAC 1-2.1-2 and 655 IAC 1-2.1-7
Fire Officer-Strategy and Tactics	655 IAC 1-2.1-2 and 655 IAC 1-2.1-7.1
Fire Officer I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-8
Fire Officer II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-9
Fire Officer III	655 IAC 1-2.1-2 and 655 IAC 1-2.1-10
Fire Officer IV	655 IAC 1-2.1-2 and 655 IAC 1-2.1-11
Public Fire and Life Safety Educator I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-16
Public Fire and Life Safety Educator II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-17
Public Fire and Life Safety Educator III	655 IAC 1-2.1-2 and 655 IAC 1-2.1-18
Safety Officer	655 IAC 1-2.1-2 and 655 IAC 1-2.1-22
Firefighter-Wildland Fire Suppression I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-23
Firefighter-Wildland Fire Suppression II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-23.1
Emergency Vehicle Technician I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-25 through 655 IAC 1-2.1-35
Emergency Vehicle Technician II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-36 through 655 IAC 1-2.1-60
Fire Service Engineering Technician	655 IAC 1-2.1-2 and 655 IAC 1-2.1-61 through 655 IAC 1-2.1-64
Motor Sports Emergency Responder	655 IAC 1-2.1-2 and 655 IAC 1-2.1-65 through 655 IAC 1-2.1-74
Rope Rescuer-Awareness	655 IAC 1-2.1-2 and 655 IAC 1-2.1-75
Rope Rescuer-Operations	655 IAC 1-2.1-2 and 655 IAC 1-2.1-96
Rope Rescuer-Technician	655 IAC 1-2.1-2 and 655 IAC 1-2.1-97
Rescue Technician-Surface Water Rescue	655 IAC 1-2.1-2 and 655 IAC 1-2.1-75.1
Vehicle and Machinery Rescuer-Awareness	655 IAC 1-2.1-2 and 655 IAC 1-2.1-75.2
Vehicle and Machinery Rescuer-Operations	655 IAC 1-2.1-2 and 655 IAC 1-2.1-98
Vehicle and Machinery Rescuer-Technician	655 IAC 1-2.1-2 and 655 IAC 1-2.1-99
Confined Space Rescuer-Awareness	655 IAC 1-2.1-2 and 655 IAC 1-2.1-75.3
Confined Space Rescuer-Operations	655 IAC 1-2.1-2 and 655 IAC 1-2.1-100
Confined Space Rescuer-Technician	655 IAC 1-2.1-2 and 655 IAC 1-2.1-101
Structural Collapse Rescuer-Awareness	655 IAC 1-2.1-2 and 655 IAC 1-2.1-75.4
Structural Collapse Rescuer-Operations	655 IAC 1-2.1-2 and 655 IAC 1-2.1-102
Structural Collapse Rescuer-Technician	655 IAC 1-2.1-2 and 655 IAC 1-2.1-103
Trench Rescuer-Awareness	655 IAC 1-2.1-2 and 655 IAC 1-2.1-75.5
Trench Rescuer-Operations	655 IAC 1-2.1-2 and 655 IAC 1-2.1-104
Trench Rescuer-Technician	655 IAC 1-2.1-2 and 655 IAC 1-2.1-105
Swift Water Rescuer-Awareness	655 IAC 1-2.1-2 and 655 IAC 1-2.1-76.1
Swift Water Rescuer-Operations	655 IAC 1-2.1-2 and 655 IAC 1-2.1-106
Swift Water Rescuer-Technician	655 IAC 1-2.1-2 and 655 IAC 1-2.1-107
Wilderness Rescuer-Awareness	655 IAC 1-2.1-2 and 655 IAC 1-2.1-108
Wilderness Rescuer-Operations	655 IAC 1-2.1-2 and 655 IAC 1-2.1-109
Wilderness Rescuer-Technician	655 IAC 1-2.1-2 and 655 IAC 1-2.1-110
Land-Based Firefighter-Marine Vessel Fires	655 IAC 1-2.1-2 and 655 IAC 1-2.1-88(a)
Fire Medic I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-89

Fire Medic II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-90
Fire Medic III	655 IAC 1-2.1-2 and 655 IAC 1-2.1-91
Fire Medic IV	655 IAC 1-2.1-2 and 655 IAC 1-2.1-92
Public Information Officer	655 IAC 1-2.1-2 and 655 IAC 1-2.1-93
Juvenile Firesetter Intervention Specialist I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-94
Juvenile Firesetter Intervention Specialist II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-95
National Incident Management System-First Responder-Awareness	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-112**
National Incident Management System-First Responder-Operations	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-113**
National Incident Management System-First Responder-Technician	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-114**
National Incident Management System-First Responder-Command	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-115**

(2) Fire department instructors as follows:

Certification	Requirements
Instructor I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-19
Instructor II/III	655 IAC 1-2.1-2 and 655 IAC 1-2.1-20
Instructor-Swift Water Rescue	655 IAC 1-2.1-2 and 655 IAC 1-2.1-19.1

(3) Firefighting training and education programs as follows:

Certification	Requirements
Basic Firefighter	655 IAC 1-2.1-3
Firefighter I	655 IAC 1-2.1-4(a)
Firefighter II	655 IAC 1-2.1-5(a)
Driver/Operator-Pumper	655 IAC 1-2.1-6(a)
Driver/Operator-Aerial	655 IAC 1-2.1-6.1(a)
Driver/Operator-Wildland Fire Apparatus	655 IAC 1-2.1-6.2(a)
Driver/Operator-Aircraft Crash and Rescue	655 IAC 1-2.1-6.3(a)
Driver/Operator-Mobile Water Supply	655 IAC 1-2.1-6.4(a)
Fire Officer-Strategy and Tactics	655 IAC 1-2.1-7.1(a)
Airport Firefighter-Aircraft Crash and Rescue	655 IAC 1-2.1-7(a)
Fire Officer I	655 IAC 1-2.1-8(a)
Fire Officer II	655 IAC 1-2.1-9(a)
Fire Officer III	655 IAC 1-2.1-10(a)
Fire Officer IV	655 IAC 1-2.1-11(a)
Fire Inspector I	655 IAC 1-2.1-12(a)
Fire Inspector II	655 IAC 1-2.1-13(a)
Fire Inspector III	655 IAC 1-2.1-14(a)
Fire Investigator I	655 IAC 1-2.1-15(a)
Public Fire and Life Safety Educator I	655 IAC 1-2.1-16(a)
Public Fire and Life Safety Educator II	655 IAC 1-2.1-17(a)
Public Fire and Life Safety Educator III	655 IAC 1-2.1-18(a)
Safety Officer	655 IAC 1-2.1-22(a)
Firefighter-Wildland Fire Suppression I	655 IAC 1-2.1-23(a)
Firefighter-Wildland Fire Suppression II	655 IAC 1-2.1-23.1(a)
Hazardous Materials First Responder-Awareness	655 IAC 1-2.1-24
Hazardous Materials First Responder-Operations	655 IAC 1-2.1-24.1
Hazardous Materials Technician	655 IAC 1-2.1-24.2
Hazardous Materials-Incident Command	655 IAC 1-2.1-24.3
Emergency Vehicle Technician I	655 IAC 1-2.1-25 through 655 IAC 1-2.1-35
Emergency Vehicle Technician II	655 IAC 1-2.1-36 through 655 IAC 1-2.1-60
Fire Service Engineering Technician	655 IAC 1-2.1-61 through 655 IAC 1-2.1-64
Motor Sports Emergency Responder	655 IAC 1-2.1-65 through 655 IAC 1-2.1-74

Rope Rescuer-Awareness	655 IAC 1-2.1-75(a)
Rope Rescuer-Operations	655 IAC 1-2.1-96(a)
Rope Rescuer-Technician	655 IAC 1-2.1-97(a)
Rescue Technician-Surface Water Rescue	655 IAC 1-2.1-75.1
Vehicle and Machinery Rescuer-Awareness	655 IAC 1-2.1-75.2(a)
Vehicle and Machinery Rescuer-Operations	655 IAC 1-2.1-98(a)
Vehicle and Machinery Rescuer-Technician	655 IAC 1-2.1-99(a)
Confined Space Rescuer-Awareness	655 IAC 1-2.1-75.3(a)
Confined Space Rescuer-Operations	655 IAC 1-2.1-100(a)
Confined Space Rescuer-Technician	655 IAC 1-2.1-101(a)
Structural Collapse Rescuer-Awareness	655 IAC 1-2.1-75.4(a)
Structural Collapse Rescuer-Operations	655 IAC 1-2.1-102(a)
Structural Collapse Rescuer-Technician	655 IAC 1-2.1-103(a)
Trench Rescuer-Awareness	655 IAC 1-2.1-75.5(a)
Trench Rescuer-Operations	655 IAC 1-2.1-104(a)
Trench Rescuer-Technician	655 IAC 1-2.1-105(a)
Swift Water Rescuer-Awareness	655 IAC 1-2.1-76.1(a)
Swift Water Rescuer-Operations	655 IAC 1-2.1-106(a)
Swift Water Rescuer-Technician	655 IAC 1-2.1-107(a)
Wilderness Rescuer-Awareness	655 IAC 1-2.1-108(a)
Wilderness Rescuer-Operations	655 IAC 1-2.1-109(a)
Wilderness Rescuer-Technician	655 IAC 1-2.1-110(a)
Land-Based Firefighter-Marine Vessel Fires	655 IAC 1-2.1-88(a)
Fire Medic I	655 IAC 1-2.1-89
Fire Medic II	655 IAC 1-2.1-90
Fire Medic III	655 IAC 1-2.1-91
Fire Medic IV	655 IAC 1-2.1-92
Public Information Officer	655 IAC 1-2.1-93
Juvenile Firesetter Intervention Specialist I	655 IAC 1-2.1-94
Juvenile Firesetter Intervention Specialist II	655 IAC 1-2.1-95
National Incident Management System-First Responder-Awareness	**655 IAC 1-2.1-112**
National Incident Management System-First Responder-Operations	**655 IAC 1-2.1-113**
National Incident Management System-First Responder-Technician	**655 IAC 1-2.1-114**
National Incident Management System-First Responder-Command	**655 IAC 1-2.1-115**
Instructor I	655 IAC 1-2.1-19(a)
Instructor II/III	655 IAC 1-2.1-20(a)
Instructor-Swift Water Rescue	655 IAC 1-2.1-19.1

(4) Nonfire service person as follows:

Certification	Requirements
Fire Inspector I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-12
Fire Inspector II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-13
Fire Inspector III	655 IAC 1-2.1-2 and 655 IAC 1-2.1-14
Fire Investigator I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-15
Hazardous Materials First Responder-Awareness	655 IAC 1-2.1-24 and 655 IAC 1-2.1-2
Hazardous Materials First Responder-Operations	655 IAC 1-2.1-24.1 and 655 IAC 1-2.1-2
Hazardous Materials-Technician	655 IAC 1-2.1-24.2 and 655 IAC 1-2.1-2
Hazardous Materials-Incident Command	655 IAC 1-2.1-24.3 and 655 IAC 1-2.1-2
Public Fire and Life Safety Educator I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-16
Public Fire and Life Safety Educator II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-17

Public Fire and Life Safety Educator III	655 IAC 1-2.1-2 and 655 IAC 1-2.1-18
Swift Water Rescuer-Awareness	655 IAC 1-2.1-2 and 655 IAC 1-2.1-76.1
Swift Water Rescuer-Operations	655 IAC 1-2.1-2 and 655 IAC 1-2.1-106
Swift Water Rescuer-Technician	655 IAC 1-2.1-2 and 655 IAC 1-2.1-107
Public Information Officer	655 IAC 1-2.1-2 and 655 IAC 1-2.1-93
Juvenile Firesetter Intervention Specialist I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-94
Juvenile Firesetter Intervention Specialist II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-95
National Incident Management System-First Responder-Awareness	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-112**
National Incident Management System-First Responder-Operations	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-113**
National Incident Management System-First Responder-Technician	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-114**
National Incident Management System-First Responder-Command	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-115**

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-1-5.1; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3384; filed Sep 24, 1999, 10:02 a.m.: 23 IR 326; readopted filed Aug 27, 2001, 10:55 a.m.: 25 IR 203; filed Nov 16, 2001, 4:37 p.m.: 25 IR 1157; errata, 26 IR 383; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4010)

SECTION 2. 655 IAC 1-2.1-111 IS ADDED TO READ AS FOLLOWS:

655 IAC 1-2.1-111 Definitions for National Incident Management System-First Responder certifications

Authority: IC 22-14-2-7
Affected: IC 36-8-10.5-7

Sec. 111. The following definitions apply to National Incident Management System-First Responder certifications:

(1) "Agency" means the Indiana department of homeland security.

(2) "Agency representative" means a person assigned by a primary, assisting, or cooperating federal, state, local, or tribal government agency or private entity that has been delegated authority to make decisions affecting that agency's or organization's participation in incident management activities following appropriate consultation with the leadership of that agency.

(3) "Air operations branch" means the branch responsible for managing all aircraft operations, including both tactical and operational, at an incident.

(4) "Area command" means an organization established to oversee the management of:

(A) multiple incidents that are each being handled by an ICS organization; or

(B) large or multiple incidents to which several incident management teams have been assigned.

Area command has the responsibility to set overall strategy and priorities, allocate critical resources according to priorities, ensure that incidents are properly managed, and ensure that objectives are met and strategies followed.

(5) "Assessment" means the evaluation and interpretation of measurements and other information to provide a basis for decision making.

(6) "Assignments" means tasks given to resources to perform within a given operational period that are based on operational objectives defined in the IAP.

(7) "Assistant" means the title for subordinates of principal command staff positions. The title indicates a level of technical capability, qualifications, and responsibility subordinate to the primary positions. Assistants may also be assigned to unit leaders.

(8) "Base" means that location at which the primary logistics functions are coordinated and administered. The ICP may be collocated with the base. There is only one (1) base per incident.

(9) "Branch" means the organizational level having functional or geographical responsibility for major aspects of incident operations. A branch is organizationally situated between the:

(A) section and the division or group in the operations section; and

(B) section and units in the logistics section.

Branches are identified by the use of Roman numerals or by functional area.

(10) "Camp" means the location where resources may be kept to support incident operations if a base is not accessible to all resources.

(11) "Chain of command" means a series of:

(A) command;

(B) control;

(C) executive; or

(D) management;

positions in hierarchical order of authority.

(12) "Chief" means the incident command system title for individuals responsible for management of functional

sections, such as the following:
(A) Operations.
(B) Planning.
(C) Financial/Administrative.
(D) Logistics.
(13) "Command" means the act of:
(A) directing;
(B) ordering; or
(C) controlling;
by virtue of explicit statutory, regulatory, or delegated authority.
(14) "Command staff" means the incident commander and the special staff positions of:
(A) public information officer;
(B) safety officer;
(C) liaison officer; and
(D) other positions as required;
who report directly to the incident commander. They may have an assistant or assistants, as needed.
(15) "Demobilization" means the processes and procedures used by all organizations:
(A) federal;
(B) state;
(C) local; and
(D) tribal;
for deactivating and transporting all resources that have been used to respond to or support the response to an incident to their home base.
(16) "Deputy" means a fully qualified individual who, in the absence of a superior, can be delegated the authority to manage a functional operation or perform a specific task. In some cases, a deputy can act as relief for a superior and, therefore, must be fully qualified in the position. Deputies can be assigned to the following:
(A) The incident commander.
(B) General staff.
(C) Branch directors.
(17) "Direct tactical assignment" means an assignment issued by the incident commander and received by the recipient before the arrival of the resources in the staging area.
(18) "Division" means the partition of an incident into geographical areas of operation. A division is:
(A) established when the number of resources exceeds the manageable span of control of the operations chief; and
(B) located within the ICS organization between the branch and resources in the operations section.
(19) "Emergency operations center" or "EOC" means the physical location at which the coordination of information and resources to support domestic incident management activities normally takes place. An EOC may be a temporary facility or located in a more central or permanently established facility within a jurisdiction. EOCs may be organized by:
(A) major functional disciplines, for example:
(i) fire;
(ii) law enforcement; and
(iii) medical;
services;
(B) jurisdiction, for example:
(i) federal;
(ii) state;
(iii) regional;
(iv) county;
(v) city; or
(vi) tribal; or
(C) some combination thereof.
(20) "Event" means a planned, nonemergency activity, for example:
(A) parades;
(B) concerts; or
(C) sporting events.
(21) "Finance/administrative" means the monitoring of incident-related costs and administration of procurement contracts.
(22) "General staff" means a group of incident management personnel organized according to function and reporting to the incident commander. The general staff normally consists of the following:
(A) The operations section chief.
(B) The planning section chief.
(C) The logistics section chief.
(D) The finance/administration section chief.
(23) "Group" means an entity established to divide the incident management structure into functional areas of operation. Groups are:
(A) composed of resources assembled to perform a special function not necessarily within a single geographic division; and
(B) when activated, located between branches and resources in the operations section.
(24) "Incident" means an occurrence or event, natural or caused by humans, that requires an emergency response to protect life or property. The term can, for example, include the following:
(A) Major disasters.
(B) Emergencies.
(C) Terrorist attacks.
(D) Terrorist threats.
(E) Wildland and urban fires.
(F) Floods.
(G) Hazardous materials spills.
(H) Nuclear accidents.
(I) Aircraft accidents.
(J) Earthquakes.
(K) Hurricanes.
(L) Tornadoes.
(M) Tropical storms.
(N) War-related disasters.

(O) Public health and medical emergencies.

(P) Other occurrences requiring an emergency response.

(25) "Incident action plan" or "IAP" means an oral or written plan containing general objectives reflecting the overall strategy for managing an incident. The term may include the following:

(A) Identification of operational resources and assignments.

(B) Attachments that provide direction and important information for management of the incident during one (1) or more operational periods.

(26) "Incident commander" or "IC" means the individual responsible for all incident activities, including the following:

(A) The development of strategies and tactics.

(B) The ordering and release of resources.

The IC has overall authority and responsibility for conducting incident operations and is responsible for the management of all incident operations at the incident site.

(27) "Incident command post" or "ICP" means the field location at which the primary tactical level, on-scene incident command functions are performed. The ICP:

(A) may be collocated with the incident base or other incident facilities; and

(B) is normally identified by a green rotating or flashing light.

(28) "Incident command system" or "ICS" means a standardized on-scene emergency management construct specifically designed to provide for the adoption of an integrated organizational structure that reflects the complexity and demands of single or multiple incidents without being hindered by jurisdictional boundaries. An ICS is:

(A) the combination of:

(i) facilities;

(ii) equipment;

(iii) personnel;

(iv) procedures; and

(v) communications;

operating within a common organizational structure and designed to aid in the management of resources during incidents; and

(B) used:

(i) for all kinds of emergencies and is applicable to small as well as large and complex incidents; and

(ii) by various jurisdictions and functional agencies, both public and private, to organize field level incident management operations.

(29) "Incident facilities" means the facilities near the incident area that will be used in the course of incident management activities including the following:

(A) The incident command post.

(B) Staging areas.

(C) The base.

(D) The camp.

(E) The helibase and helispots.

(30) "Incident objectives" means statements of guidance and direction necessary for selecting an appropriate strategy or strategies and the tactical direction of resources. Incident objectives:

(A) are based on realistic expectations of what can be accomplished when all allocated resources have been effectively deployed; and

(B) must be achievable and measurable, yet flexible enough to allow strategic and tactical alternatives.

(31) "Liaison officer" means a member of the command staff responsible for coordinating with representatives from cooperating and assisting agencies.

(32) "Logistics" means providing resources and other services to support incident management.

(33) "Logistics section" means the section responsible for providing logistics support for the incident.

(34) "Major disaster" means any natural catastrophe, including any:

(A) hurricane;

(B) tornado;

(C) storm;

(D) high water;

(E) wind-driven water;

(F) tidal wave;

(G) tsunami;

(H) earthquake;

(I) volcanic eruption;

(J) landslide;

(K) mudslide;

(L) snowstorm; or

(M) drought;

or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under 42 U.S.C. 5122 to supplement the efforts and available resources of states, tribes, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(35) "Multi-agency coordination" means multiple agencies working together to accomplish a mutually understood common goal.

(36) "Multi-agency coordination entity" means an entity that functions within a broader multi-agency coordination system and may:

(A) establish the priorities among incidents and associated resource allocations;

(B) deconflict agency policies; and

(C) provide strategic guidance and direction to support incident management activities.

(37) "Multi-agency coordination system" means a system designed to provide the architecture to support coordination for incident prioritization, critical resource alloca-

tion, communications systems integration, and information coordination. The components of a multi-agency coordination system include the following:

(A) Facilities.

(B) Equipment.

(C) EOCs.

(D) Specific multi-agency coordination entities.

(E) Personnel.

(F) Procedures.

(G) Communications.

These systems assist agencies and organizations to fully integrate the subsystems of the NIMS.

(38) "Multi-jurisdictional incident" means an incident requiring action from multiple agencies that each have jurisdiction to manage certain aspects of an incident. In ICS, these incidents will be managed under unified command.

(39) "National Incident Management System" or "NIMS" means a system mandated by the federal government that provides a consistent nationwide approach for state, local, and tribal governments, the private sector, and nongovernmental organizations to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents, regardless of cause, size, or complexity. To provide for interoperability and compatibility among state, local, and tribal capabilities, the NIMS includes the following core set of concepts, principles, and terminology:

(A) The ICS.

(B) Multi-agency coordination systems.

(C) Training.

(D) The identification and management of resources, including systems for classifying types of resources.

(E) Qualification and certification.

(F) The collection, tracking, and reporting of incident information and incident resources.

(40) "Operational period" means the time scheduled for executing a given set of operation actions, as specified in the IAP, and can be of various lengths, although usually not over twenty-four (24) hours.

(41) "Operations section" means the section responsible for all tactical incident operations. In ICS, the term normally includes subordinate branches, divisions, and groups.

(42) "Planning" means the collection, evaluation, and dissemination of operational information related to the incident for the preparation and documentation of the IAP and includes the maintenance of information on the following:

(A) The current and forecasted situation.

(B) The status of resources assigned to the incident.

(43) "Planning section" means the section responsible for incident planning.

(44) "Public information officer" means a member of the command staff responsible for interfacing with:

(A) the public and media; or

(B) other agencies;

with incident-related information requirements.

(45) "Resource management" means a system for identifying available resources at all jurisdictional levels to enable timely and unimpeded access to resources needed to prepare for, respond to, or recover from an incident. The term under the NIMS includes the following:

(A) Mutual aid agreements.

(B) The use of special:

(i) federal;

(ii) state;

(iii) local; and

(iv) tribal;

teams.

(C) Resource mobilization protocols.

(46) "Resources" means personnel and items of equipment, supplies, and facilities available or potentially available for assignment to incident operations and for which status is maintained. Resources:

(A) are described by kind and type; and

(B) may be used in operational support or supervisory capacities at an:

(i) incident; or

(ii) EOC.

(47) "Section" means the organizational level having responsibility for a major functional area of incident management, for example, the following:

(A) Operations.

(B) Planning.

(C) Finance/Administrative.

(D) Logistics.

The section is organizationally situated between the branch and the incident commander and is commanded by a chief.

(48) "Single command" means a type of command that is used when:

(A) an incident occurs within a single jurisdiction; and

(B) there is no jurisdictional or functional agency overlap.

(49) "Span of control" means the number of individuals a supervisor is responsible for and is usually expressed as the ratio of supervisors to individuals. Under the NIMS, an appropriate span of control is between 1:3 and 1:7.

(50) "Staging area" means a location established where resources can be placed while awaiting a tactical assignment. The operations section manages staging areas.

(51) "Strategy" means the general direction selected to accomplish incident objectives set by the IC.

(52) "Tactics" means the science of arranging and maneuvering resources in action during an incident.

(53) "Technical specialist" means a person who:

(A) is assigned to an incident;

(B) possesses special skills; and

(C) is activated only when needed.

(54) "Terrorism" means an activity that involves an act dangerous to human life or potentially destructive of critical infrastructure or key resources and is:
(A) a violation of the criminal laws of:
(i) the United States; or
(ii) any state or other subdivision of the United States in which it occurs; and
(B) intended to:
(i) intimidate or coerce the civilian population;
(ii) influence a government; or
(iii) affect the conduct of a government;
by mass destruction, assassination, or kidnapping.
(55) "Type" means a classification of resources in the ICS that refers to capability. Type 1 is generally considered to be more capable than Type 2, 3, or 4, respectively, because of:
(A) size;
(B) power;
(C) capacity; or
(D) in the case of incident management teams, experience and qualifications.
(56) "Unified area command" means an area command that is established involving multi-jurisdictional incidents.
(57) "Unified command" or "UC" means an application of ICS used when:
(A) there is more than one (1) agency with incident jurisdiction; or
(B) incidents cross political jurisdictions.
Agencies work together through the designated members of the UC, often the senior person from the agencies or disciplines, or both, participating in the UC, to establish a common set of objectives and strategies and a single IAP.
(58) "Unit" means the organizational element having functional responsibility for a specific incident planning or logistics activity.
(59) "Unity of command" means the concept by which each person within an organization reports to one (1) and only one (1) designated person. The purpose of unity of command is to ensure unity of effort under one (1) responsible commander for every objective.
(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-111)

SECTION 3. 655 IAC 1-2.1-112 IS ADDED TO READ AS FOLLOWS:

655 IAC 1-2.1-112 National Incident Management System-First Responder-Awareness

Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 112. (a) The minimum training standards for National Incident Management System-First Responder-Awareness certification shall be as set out in this section.

(b) The candidate shall perform the following:
(1) List and explain the uses of the command staff.
(2) Identify and explain the role of each of the five (5) major management functions for general staff.
(3) Identify the principles of span of control.
(4) Identify the ICS position titles, utilizing the organizational level, title, and support position.
(5) Identify and explain the role of each of the organizational components.
(6) Identify the incident facilities and explain the functions of each.
(7) Identify accountability guidelines and procedures.
(8) Explain and demonstrate the transfer of command.
(9) Demonstrate the expansion of the basic ICS into an all purpose management tool.
(10) Explain the utilization of an IAP.
(11) Explain unity of command.
(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-112)

SECTION 4. 655 IAC 1-2.1-113 IS ADDED TO READ AS FOLLOWS:

655 IAC 1-2.1-113 National Incident Management System-First Responder-Operations

Authority: IC 22-14-2-7
Affected: IC 36-8-10.5-7

Sec. 113. (a) The minimum training standards for National Incident Management System-First Responder-Operations certification shall be as set out in this section.

(b) The candidate shall perform the following:
(1) Demonstrate the ability to establish command.
(2) Demonstrate the ability to begin establishing incident facilities.
(3) Develop an IAP for each operational level.
(4) Demonstrate the process of transferring command.
(5) Explain the unity of command and chain of command.
(6) Explain the span of control.
(7) Demonstrate the use of integrated communications using the three (3) key elements.
(8) Demonstrate the development of a communications plan.
(9) Explain and demonstrate the difference between single command and unified command.
(10) Explain the functions of the planning chief.
(11) Name and explain the functions of the planning units.
(12) Explain the functions of the logistics chief.
(13) Name and explain the functions of the logistics branch.
(14) Explain the functions of the finance/administrative

chief.
(15) Name and explain the unit functions of the finance/administrative section.
(16) Describe the functional roles in resource management.
(17) Describe the types of resources often used in incidents.
(18) Identify how resources are procured.
(19) Provide examples of how resources are typed for various applications.
(20) Explain why resource status keeping is important to effective incident operations.

(c) The candidate shall have been certified as a National Incident Management System-First Responder-Awareness.
(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-113)

SECTION 5. 655 IAC 1-2.1-114 IS ADDED TO READ AS FOLLOWS:

655 IAC 1-2.1-114 National Incident Management System-First Responder-Technician

Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 114. (a) The minimum training standards for National Incident Management System-First Responder-Technician certification shall be as set out in this section.

(b) The candidate shall perform the following:
(1) Match responsibility statements to each ICS organizational element.
(2) List the ICS positions, which may include deputies, and describe the deputies' roles and responsibilities.
(3) Describe the differences between deputies and assistants.
(4) Describe ICS reporting and working relationships for technical specialists and agency representatives.
(5) Describe reporting relationships and information flow within the ICS organization.
(6) Describe the steps in assuming and transferring command at an incident.
(7) List the major elements included in the incident briefing.
(8) Develop a sample organization around a major event, including the use of all appropriate sections and organizational modules.
(9) Describe how incidents can best be managed by appropriate and early designation of command staff and delegation of authority.
(10) Describe how unified command functions on a multijurisdictional incident.
(11) List the minimum staff requirements within each organizational element for at least two (2) incidents of different sizes.
(12) Describe the role and use of forms in effective incident management.
(13) Identify and describe four (4) basic principles of resource management.
(14) Identify the basic steps in managing resources for an incident.
(15) Identify the contents and use of the operational planning worksheet.
(16) Identify the organizational elements at an incident that can order resources.
(17) Describe the differences between single and multipoint resource ordering and the reasons for each.
(18) Describe why and how resources are assigned to the following:
(A) Staging areas.
(B) Camps.
(C) Direct tactical assignments.
(19) Describe the purpose and importance of planning for demobilization.
(20) Describe five (5) key considerations associated with resource management and the reasons for each consideration.
(21) Describe the functions and general duties associated with each element of the air operations branch organization.
(22) Diagram a full air operations branch organization using a simulated scenario.
(23) Describe the function and use of the air operations summary worksheet.
(24) List the major steps involved in the planning process.
(25) Identify the ICS titles of personnel who have responsibilities in developing the IAP and list their duties.
(26) As part of an exercise, identify incident objectives for a simulated scenario.
(27) As part of an exercise, describe appropriate strategies and tactics to meet incident objectives for a simulated scenario.
(28) Explain the use of operational periods in the planning process and how operational periods are derived.
(29) Explain the function of the operational planning worksheet and other forms that may be used in preparing the IAP.
(30) Explain the criteria for determining when the IAP should be prepared in writing.
(31) Identify the kinds of supporting materials included in an IAP.
(32) List the major sections in a demobilization plan.
(33) As part of a group exercise, develop an IAP for a simulated scenario.

(c) The candidate shall have been certified as a National Incident Management System-First Responder-Operations.
(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-114)

SECTION 6. 655 IAC 1-2.1-115 IS ADDED TO READ AS FOLLOWS:

655 IAC 1-2.1-115 National Incident Management System-First Responder-Command

Authority: IC 22-14-2-7
Affected: IC 36-8-10.5-7

Sec. 115. (a) The minimum training standards for National Incident Management System-First Responder-Command certification shall be as set out in this section.

(b) The candidate shall perform the following:
(1) Identify the steps built into the ICS design to compensate for previous incident management problems.
(2) Describe the primary guidelines related to command staff and general staff.
(3) Summarize the principal responsibilities for each member of the command staff and general staff.
(4) Describe the roles of deputies and assistants in incident management.
(5) Describe the purposes and responsibilities of agency representatives and reporting relationships and how they can be used effectively within the incident organization.
(6) Develop a command staff and general staff organization around a simulated scenario.
(7) Define unified command.
(8) Define the advantages of unified command and the kinds of situations that may require a unified command organization.
(9) Identify the primary features of a unified command organization.
(10) Given a simulated situation, describe roles and reporting relationships under a unified command that involves agencies from within the same jurisdiction and under multi-jurisdictional conditions.
(11) Describe areas of cost saving that may apply under a unified command structure.
(12) Given a simulated situation, describe an appropriate unified command organization.
(13) List the principal factors often found in or related to major incidents.
(14) List the principal factors often found in or related to complex incidents.
(15) List the four (4) expansion options for incident organization and describe the conditions under which they would be applied.
(16) Through an exercise, demonstrate how to apply the various options related to major or complex incident management.
(17) Define area command.
(18) Identify differences among area command, unified command, multi-agency coordination systems, and EOCs.
(19) List the principal advantages of using area command.
(20) Describe how, when, and where area command would be established.
(21) Describe the area command organization.
(22) Identify six (6) primary functional responsibilities of area command.
(23) Given a simulated situation, develop an area command organization.
(24) Describe the kinds of incident management problems that can occur due to the lack of multi-agency coordination.
(25) Define the essential terms related to multi-agency coordination.
(26) Identify the levels at which multi-agency coordination is commonly accomplished.
(27) Identify essential differences among area command, multi-agency coordination, and EOCs.
(28) Identify the primary components of a multi-agency coordination system.
(29) List the responsibilities of a multi-agency coordination group.
(30) Identify the major guidelines for establishing and using multi-agency coordination systems and multi-agency groups.
(31) Identify principal positions within a multi-agency coordination system.

(c) The candidate shall have been certified as a National Incident Management System-First Responder-Technician.
(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-115)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 16, 2005 at 10:00 a.m., at the Columbus Holiday Inn, 2480 Jonathan Moore Pike, Crystal Ballroom A-AZ, Columbus, Indiana the Board of Firefighting Personnel Standards and Education will hold a public hearing on proposed rules concerning the adoption of the National Incident Management System-First Responder certifications. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room E239 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Jerry Nulliner
Secretary
Board of Firefighting Personnel Standards and Education

TITLE 760 DEPARTMENT OF INSURANCE

Proposed Rule
LSA Document #05-5

DIGEST

Amends 760 IAC 3-1, 760 IAC 3-2, 760 IAC 3-4 through

760 IAC 3-9, 760 IAC 3-11, 760 IAC 3-12, 760 IAC 3-14, 760 IAC 3-15, and 760 IAC 3-18 to implement updates to the National Association of Insurance Commissioner model Medicare supplement insurance minimum standards model act. Effective 30 days after filing with the secretary of state.

760 IAC 3-1-1
760 IAC 3-2-2.5
760 IAC 3-2-6.1
760 IAC 3-2-6.2
760 IAC 3-2-7
760 IAC 3-4-1
760 IAC 3-5-1
760 IAC 3-6-1
760 IAC 3-7-1
760 IAC 3-8-1
760 IAC 3-9-1
760 IAC 3-9-2
760 IAC 3-11-1
760 IAC 3-12-1
760 IAC 3-14-1
760 IAC 3-15-1
760 IAC 3-18-1

SECTION 1. 760 IAC 3-1-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-1-1 Applicability and scope
Authority: IC 27-8-13-10
Affected: IC 27-8-13-1

Sec. 1. (a) Except as otherwise specifically provided in 760 IAC 3-5, **760 IAC 3-10,** 760 IAC 3-11, 760 IAC 3-14, **760 IAC 3-18,** and 760 IAC 3-19, this article shall apply to the following:

(1) All Medicare supplement policies delivered or issued for delivery in this state on or after the effective date of this regulation.

(2) All certificates issued under group Medicare supplement policies which certificates have been delivered or issued for delivery in this state.

(b) This article shall not apply to a policy or contract of:

(1) one (1) or more employers or labor organizations; or ~~of~~

(2) the trustees of a fund established by one (1) or more employers or labor organizations, or combination thereof;

for employees or former employees, or a combination thereof, or ~~for~~ members or former members, or a combination thereof, of the labor organizations. *(Department of Insurance; 760 IAC 3-1-1; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2563; filed Jul 18, 1996, 1:00 p.m.: 19 IR 3412; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 2. 760 IAC 3-2-2.5 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-2-2.5 "Bankruptcy" defined
Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1
Affected: IC 27-8-13-1

Sec. 2.5. As used in this rule, "bankruptcy" means when a ~~Medicare+Choice~~ **Medicare Advantage** organization that is not an issuer has:

(1) filed, or has had filed against it, a petition for declaration of bankruptcy; and ~~has~~

(2) ceased doing business in Indiana.

(Department of Insurance; 760 IAC 3-2-2.5; filed Feb 1, 1999, 10:45 a.m.: 22 IR 1972; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 3. 760 IAC 3-2-6.1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-2-6.1 "Medicare Advantage" defined
Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1
Affected: IC 27-8-13-1

Sec. 6.1. As used in this rule, ~~"Medicare+Choice organization"~~ **"Medicare Advantage"** has the meaning ~~as~~ set forth in 42 U.S.C. 1395w-28. *(Department of Insurance; 760 IAC 3-2-6.1; filed Feb 1, 1999, 10:45 a.m.: 22 IR 1973; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 4. 760 IAC 3-2-6.2 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-2-6.2 "Medicare Advantage plan" defined
Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1
Affected: IC 27-8-13-1

Sec. 6.2. As used in this rule, ~~"Medicare+Choice~~ **"Medicare Advantage** plan" has the meaning ~~as~~ set forth in 42 U.S.C. 1395w-28. *(Department of Insurance; 760 IAC 3-2-6.2; filed Feb 1, 1999, 10:45 a.m.: 22 IR 1973; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 5. 760 IAC 3-2-7 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-2-7 "Medicare supplement policy" defined
Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1
Affected: IC 27-8-13-1

Sec. 7. "Medicare supplement policy" means a group or individual policy of accident and sickness insurance or a subscriber contract of hospital and medical service associations or health maintenance organizations, other than:

(1) a policy issued pursuant to a contract under Section 1876 of the Social Security Act (42 U.S.C. 1395 et seq.); or

(2) an issued policy under a demonstration project specified in 42 U.S.C. 1395ss(g)(1); ~~which~~

that is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare. **The term does not include Medicare Advantage plans established under Medicare Part C, Outpatient Prescription Drug plans established under Medicare Part D, or any health care prepayment plan that provides benefits pursuant to an agreement under Section 1833(a)(1)(A) of the Social Security Act.** *(Department of Insurance; 760 IAC 3-2-7; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2564; filed Jul 18, 1996, 1:00 p.m.: 19 IR 3413; readopted filed Sep 14, 2001, 12:22*

p.m.: 25 IR 531)

SECTION 6. 760 IAC 3-4-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-4-1 Policy provisions
Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1
Affected: IC 27-8-13-1

Sec. 1. (a) Except for permitted preexisting condition clauses as described in ~~760 IAC 3-5-1(b)(1)~~ **760 IAC 3-5-1(b)(1)(A), 760 IAC 3-5-1(b)(1)(B),** and 760 IAC 3-6-1(b), no policy or certificate shall be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy if ~~such~~ **the** policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

(b) No Medicare supplement policy or certificate may use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

(c) No Medicare supplement policy or certificate in force in the state shall contain benefits ~~which~~ **that** duplicate benefits provided by Medicare.

(d) Subject to 760 IAC 3-5-1(b)(3) through 760 IAC 3-5-1(b)(7), 760 IAC 3-5-1(b)(9), 760 IAC 3-6-1(b)(3), and 760 IAC 3-6-1(b)(4), a Medicare supplement policy with benefits for outpatient prescription drugs in existence before January 1, 2006, shall be renewed for current policyholders who do not enroll in Part D at the option of the policyholder.

(e) A Medicare supplement policy with benefits for outpatient prescription drugs shall not be issued after December 31, 2005.

(f) After December 31, 2005, a Medicare supplement policy with benefits for outpatient prescription drugs may not be renewed after the policyholder enrolls in Medicare Part D unless:

(1) the policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual's coverage under a Part D plan; and

(2) premiums are adjusted to reflect the elimination of outpatient prescription drug coverage at the time of Medicare Part D enrollment, accounting for any claims paid, if applicable.

(Department of Insurance; 760 IAC 3-4-1; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2565; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 7. 760 IAC 3-5-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-5-1 Minimum benefit standards for policies or certificates issued for delivery before January 1, 1992
Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1
Affected: IC 27-8-13-1

Sec. 1. (a) No policy or certificate may be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy or certificate ~~prior to~~ **before** January 1, 1992, unless it meets or exceeds the minimum standards in this section. These are minimum standards and do not preclude the inclusion of other provisions or benefits ~~which~~ **that** are not inconsistent with these standards.

(b) The following standards apply to Medicare supplement policies and certificates issued ~~prior to~~ **before** January 1, 1992, and are in addition to all other requirements of this article:

(1) A Medicare supplement policy or certificate shall not:

(A) exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition; ~~The policy or certificate shall not~~

(B) define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage; **or**

~~(2) A Medicare supplement policy or certificate shall not~~

(C) indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

~~(3)~~ **(2)** A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with ~~such~~ **the** changes.

~~(4)~~ **(3)** A "noncancellable", "guaranteed renewable", or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

(A) provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

(B) be canceled or nonrenewed by the issuer solely on the grounds of deterioration of health.

~~(5)~~ **(4)** Except as authorized by the commissioner of the department of insurance in this state, an issuer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

~~(6)~~ **(5)** If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in subdivision ~~(8),~~ **(7),** the issuer shall offer certificate holders **at least** an individual Medicare supplement policy: ~~The issuer shall offer the certificate holder at least the following choices:~~

(A) ~~An individual Medicare supplement policy~~ currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; **or**

(B) ~~An individual Medicare supplement policy which~~ **that** provides only such benefits as are required to meet the minimum standards as defined in 760 IAC 3-6-1(c).

~~(7)~~ **(6)** If membership in a group is terminated, the issuer shall **offer the certificate holder:**

(A) ~~offer the certificate holder such~~ **the** conversion opportunities ~~as are~~ described in subdivision ~~(6);~~ **(5);** or

(B) at the option of the group policyholder, ~~offer the certificate holder~~ continuation of coverage under the group policy.

~~(8)~~ **(7)** If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

~~(9)~~ **(8)** Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss ~~which~~ **that** commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to:

(A) the duration of the policy benefit period, if any; or ~~to~~

(B) payment of the maximum benefits.

Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(9) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug Improvement and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this subsection.

(c) Minimum benefit standards are as follows:

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the sixty-first day through the ninetieth day in any Medicare benefit period.

(2) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount.

(3) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during **the** use of Medicare's lifetime hospital inpatient reserve days.

(4) Upon exhaustion of all Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of ninety percent (90%) of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional three hundred sixty-five (365) days.

(5) Coverage under Medicare Part A for the reasonable cost of:

(A) the first three (3) pints of blood; or

(B) equivalent quantities of packed red blood cells, as defined under federal regulations;

unless replaced in accordance with federal regulations or already paid for under Part B.

(6) Coverage for the coinsurance amount of Medicare eligible expenses under Part B, regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible (one hundred dollars ($100)).

(d) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of:

(1) the first three (3) pints of blood; or

(2) equivalent quantities of packed red blood cells, as defined under federal regulations;

unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount. *(Department of Insurance; 760 IAC 3-5-1; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2565; filed Jul 18, 1996, 1:00 p.m.: 19 IR 3413; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 8. 760 IAC 3-6-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-6-1 Benefit standards for policies or certificates issued or delivered after December 31, 1991

Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1
Affected: IC 27-8-13-1

Sec. 1. (a) The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state ~~on or~~ after ~~January 1, 1992.~~ **December 31, 1991.** No policy or certificate may be:

(1) advertised;

(2) solicited;

(3) delivered; or

(4) issued for delivery;

in this state as a Medicare supplement policy or certificate unless ~~it~~ **the policy or certificate** complies with **the** benefit standards in this section.

(b) The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this article:

(1) A Medicare supplement policy or certificate:

(A) shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition; ~~The policy or certificate~~

(B) may not define a preexisting condition more restrictively than a condition for which medical advice was given

or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage; **and**

~~(2) A Medicare supplement policy or certificate~~ **(C)** shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

~~(3)~~ **(2)** A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

~~(4)~~ **(3)** No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

~~(5)~~ **(4)** Each Medicare supplement policy shall be guaranteed renewable and shall meet the following requirements:

(A) The issuer shall not cancel or nonrenew the policy:

(i) solely on the ground of health status of the individual; **or**

~~(B) The issuer shall not cancel or nonrenew the policy~~ **(ii)** for any reason other than nonpayment of premium or material misrepresentation.

~~(C)~~ **(B)** If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under clause ~~(E)~~; **(D),** the issuer shall offer certificate holders an individual Medicare supplement policy ~~which~~ **that,** at the option of the certificate holder, **provides for:**

(i) ~~provides for~~ continuation of the benefits contained in the group policy; or

(ii) ~~provides for~~ such benefits as otherwise ~~meets~~ **meet** the requirements of this subsection.

~~(D)~~ **(C)** If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall **offer the certificate holder:**

(i) ~~offer the certificate holder~~ the conversion opportunity described in clause ~~(C);~~ **(B);** or

(ii) at the option of the group policyholder, ~~offer the certificate holder~~ continuation of coverage under the group policy.

~~(E)~~ **(D)** If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(E) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug Improvement and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this subsection.

~~(6)~~ **(5)** Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss ~~which~~ **that** commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to:

(A) the duration of the policy benefit period, if any; or

(B) payment of the maximum benefits.

Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

~~(7)~~ **(6)** Each Medicare supplement policy shall do the following:

(A) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period (not to exceed twenty-four (24) months) in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificate holder notifies the issuer of ~~such~~ **the** policy or certificate within ninety (90) days after the date the individual becomes entitled to ~~such~~ **the** assistance.

(B) If ~~such~~ **the** suspension occurs and if the policyholder or certificate holder loses entitlement to ~~such~~ **the** medical assistance, ~~such~~ **the** policy or certificate shall be automatically reinstituted (effective as of the date of termination of ~~such~~ **the** entitlement) as of the termination of ~~such~~ **the** entitlement if the policyholder or certificate holder:

(i) provides notice of loss of ~~such~~ **the** entitlement within ninety (90) days after the date of ~~such~~ **the** loss; and

(ii) pays the premium attributable to the period, effective as of the date of termination of ~~such~~ **the** entitlement.

(C) Reinstitution of ~~such~~ **the** coverages **shall do all of the following:**

(i) ~~shall~~ Not provide for any waiting period with respect to treatment of preexisting conditions.

(ii) ~~shall~~ Provide for **resumption of** coverage ~~which~~ **that** is substantially equivalent to coverage in effect before the date of ~~such~~ **the** suspension. **If the suspended Medicare supplement policy provided coverage for outpatient prescription drugs, reinstitution of the policy for Medicare Part D enrollees shall be without coverage for outpatient prescription drugs** and **shall otherwise provide substantially equivalent coverage to the coverage in effect before the date of suspension.**

(iii) ~~shall~~ Provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had

the coverage not been suspended.

(c) Every issuer shall make available a policy or certificate including only the following basic core package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare supplement insurance benefit plans in addition to the basic core package, but not in lieu thereof. The standards for basic core benefits common to all benefit plans are as follows:

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the sixty-first day through the ninetieth day in any Medicare benefit period.

(2) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used.

(3) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of **one hundred percent (100%) of** the Medicare Part A eligible expenses for hospitalization paid at the ~~diagnostic related group (DRG) day outlier per diem~~ **applicable prospective payment system (PPS) rate,** or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five (365) days.

(4) Coverage under Medicare Parts A and B for the reasonable cost of:

(A) the first three (3) pints of blood; or

(B) equivalent quantities of packed red blood cells, as defined under federal regulations;

unless replaced in accordance with federal regulations.

(5) Coverage for the coinsurance amount of Medicare eligible expenses under Part B, regardless of hospital confinement, subject to the Medicare Part B deductible.

(d) The additional benefits shall be included in Medicare supplement benefit Plans B through J only as provided by 760 IAC 3-7. The standards for additional benefits are as follows:

(1) Medicare Part A deductible, coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.

(2) Skilled nursing facility care, coverage for the actual billed charges up to the coinsurance amount from the twenty-first day through the one hundredth day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A.

(3) Medicare Part B deductible, coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(4) Eighty percent (80%) of the Medicare Part B excess charges, coverage for eighty percent (80%) of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law and the Medicare approved Part B charge.

(5) One hundred percent (100%) of the Medicare Part B excess charges, coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law and the Medicare approved Part B charge.

(6) Basic outpatient prescription drug benefit, coverage for fifty percent (50%) of outpatient prescription drug charges, after a two hundred fifty dollar ($250) calendar year deductible, to a maximum of one thousand two hundred fifty dollars ($1,250) in benefits received by the insured per calendar year, to the extent not covered by Medicare. **The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.**

(7) Extended outpatient prescription drug benefit, coverage for fifty percent (50%) of outpatient prescription drug charges, after a two hundred fifty dollar ($250) calendar year deductible to a maximum of three thousand dollars ($3,000) in benefits received by the insured per calendar year, to the extent not covered by Medicare. **The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.**

(8) Medically necessary emergency care in a foreign country, coverage to the extent not covered by Medicare for eighty percent (80%) of the billed charges for Medicare eligible expenses for medically necessary emergency hospital, physician, and medical care received in a foreign country, which care:

(A) would have been covered by Medicare if provided in the United States; and ~~which care~~

(B) began during the first sixty (60) consecutive days of each trip outside the United States;

subject to a calendar year deductible of two hundred fifty dollars ($250) and a lifetime maximum benefit of fifty thousand dollars ($50,000). For purposes of this benefit, "emergency care" means care needed immediately because of an injury or an illness of sudden and unexpected onset.

(9) Preventive medical care benefit, coverage for the following preventive health services **not covered by Medicare:**

(A) An annual clinical preventive medical history and physical examination that may include tests and services from clause (B) and patient education to address preventive health care measures.

(B) Any one (1) or a combination of the following preventive screening tests or preventive services, the **selection and** frequency of which is ~~considered~~ **determined to be** medically appropriate **by the attending physician:**

(i) Fecal occult blood test ~~and/or~~ **or** digital rectal examination, **or both.**

(ii) Mammogram.

(iii) Dipstick urinalysis for hematuria, bacteriuria, and proteinuria.

(iv) Pure tone (air only) hearing screening test, administered or ordered by a physician.

(v) Serum cholesterol screening (every five (5) years).

(vi) Thyroid function test.

(vii) Diabetes screening.

~~(C) Influenza vaccine administered at any appropriate time during the year and tetanus and diphtheria booster (every ten (10) years).~~

~~(D) Any other tests or preventive measures determined appropriate by the attending physician.~~

Reimbursement shall be for the actual charges up to one hundred percent (100%) of the Medicare approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of one hundred twenty dollars ($120) annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

(10) At-home recovery benefit, coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury, or surgery, including the following requirements:

(A) For purposes of this subdivision, the following definitions shall apply:

(i) "Activities of daily living" include, but are not limited to, **the following:**

(AA) Bathing.

(BB) Dressing.

(CC) Personal hygiene.

(DD) Transferring.

(EE) Eating.

(FF) Ambulating.

(GG) Assistance with drugs that are normally self-administered. ~~and~~

(HH) Changing bandages or other dressings.

(ii) "At-home recovery visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four (4) hours in a twenty-four (24) hour period of services provided by a care provider is one (1) visit.

~~(ii)~~ **(iii)** "Care provider" means a duly qualified or licensed home health aide/homemaker, personal care aide, or nurse:

(AA) provided through a licensed home health care agency; or

(BB) referred by a licensed referral agency or licensed nurses registry.

~~(iii)~~ **(iv)** "Home" ~~shall mean~~ **means** any place used by the insured as a place of residence, provided that ~~such~~ **the** place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

~~(iv) "At-home recovery visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four (4) hours in a twenty-four (24) hour period of services provided by a care provider is one (1) visit.~~

(B) Coverage requirements and limitations are as follows:

(i) At-home recovery services provided must be primarily services ~~which~~ **that** assist in activities of daily living.

(ii) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

(iii) Coverage is limited to the following:

(AA) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment.

(BB) The actual charges for each visit up to a maximum reimbursement of forty dollars ($40) per visit.

(CC) One thousand six hundred dollars ($1,600) per calendar year.

(DD) Seven (7) visits in any one (1) week.

(EE) Care furnished on a visiting basis in the insured's home.

(FF) Services provided by a care provider as defined in clause ~~(A)(ii).~~ **(A)(iii).**

(GG) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded.

(HH) At-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight (8) weeks after the service date of the last Medicare approved home health care visit.

(iv) Coverage is excluded for the following:

(AA) Home care visits paid for by Medicare or other government programs.

(BB) Care provided by family members, unpaid volunteers, or providers who are not care providers.

~~(11) An issuer may, with the prior approval of the commissioner of the department of insurance, offer a policy or certificate with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. Such new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost effective, and offered in a manner which is consistent with the goal of simplification of Medicare supplement policies.~~

(e) Standardized Medicare supplement benefit plan "K" shall consist of the following:

(1) Coverage of one hundred percent (100%) of the Part A hospital coinsurance amount for each day used from the sixty-first day through the ninetieth day in any Medicare benefit period.

(2) Coverage of one hundred percent (100%) of the Part

A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the ninety-first day through the one hundred fiftieth day in any Medicare benefit period.

(3) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent (100%) of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system rate, or the appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five (365) days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance.

(4) Coverage for fifty percent (50%) of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in subdivision (10).

(5) Coverage for fifty percent (50%) of the coinsurance amount for each day used from the twenty-first day through the one hundredth day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in subdivision (10).

(6) Coverage for fifty percent (50%) of the cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in subdivision (10).

(7) Coverage for fifty percent (50%) under Medicare Part A or B of the reasonable cost of:

(A) the first three (3) pints of blood; or

(B) equivalent quantities of packed red blood cells, as defined under federal regulations;

unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in subdivision (10).

(8) Except for coverage provided in subdivision (9), coverage for fifty percent (50%) of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in subdivision (10).

(9) Coverage of one hundred percent (100%) of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible.

(10) Coverage for one hundred percent (100%) of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of four thousand dollars ($4,000) in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(f) Standardized Medicare supplement benefit plan "L" shall consist of the following:

(1) The benefits described in subsection (e)(1) through (e)(3) and (e)(9).

(2) The benefits described in subsection (e)(4) through (e)(8), but substituting seventy-five percent (75%) for fifty percent (50%).

(3) The benefit described in subsection (e)(10), but substituting two thousand dollars ($2,000) for four thousand dollars ($4,000).

(Department of Insurance; 760 IAC 3-6-1; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2566; filed Jul 18, 1996, 1:00 p.m.: 19 IR 3414; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 9. 760 IAC 3-7-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-7-1 Standard Medicare supplement benefit plans

Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1
Affected: IC 27-8-13-1

Sec. 1. (a) An issuer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic core benefits as defined in 760 IAC 3-6-1(c).

(b) No groups, packages, or combinations of Medicare supplement benefits other than those listed in this section shall be offered for sale in this state, except as may be permitted in ~~760 IAC 3-6-1(d)(11) and~~ 760 IAC 3-8.

(c) Benefit plans shall be uniform in structure, language, designation, and format to the standard benefit Plans A through J listed in this section and conform to the definitions in 760 IAC 3-2 and 760 IAC 3-3. Each benefit shall:

(1) be structured in accordance with the format provided in 760 IAC 3-6-1(c) through 760 IAC 3-6-1(d); and

(2) list the benefits in the order shown in subsection (e).

As used in this section, "structure, language, and format" means style, arrangement, and overall content of a benefit.

(d) An issuer may use, in addition to the benefit plan designations required in subsection (c), other designations to the extent permitted by law.

(e) **The** makeup of benefit plans shall be as follows:

(1) Standardized Medicare supplement benefit Plan A shall be limited to the basic (core) benefits common to all benefit plans as defined in 760 IAC 3-6-1(c).

(2) Standardized Medicare supplement benefit Plan B shall include only the core benefit as defined in 760 IAC 3-6-1(c), plus the Medicare Part A deductible as defined in 760 IAC 3-6-1(d)(1).

(3) Standardized Medicare supplement benefit Plan C shall include only the core benefit as defined in 760 IAC 3-6-1(c), plus:

(A) **the** Medicare Part A deductible;

(B) skilled nursing facility care;
(C) **the** Medicare Part B deductible; and
(D) medically necessary emergency care in a foreign country;
as defined in 760 IAC 3-6-1(d)(1) through 760 IAC 3-6-1(d)(3) and 760 IAC 3-6-1(d)(8), respectively.
(4) Standardized Medicare supplement benefit Plan D shall include only the core benefit as defined in 760 IAC 3-6-1(c), plus:
(A) **the** Medicare Part A deductible;
(B) skilled nursing facility care;
(C) medically necessary emergency care in a foreign country; and
(D) **the** at-home recovery benefit;
as defined in 760 IAC 3-6-1(d)(1), ~~through~~ 760 IAC 3-6-1(d)(2), 760 IAC 3-6-1(d)(8), and 760 IAC 3-6-1(d)(10), respectively.
(5) Standardized Medicare supplement benefit Plan E shall include only the core benefit as defined in 760 IAC 3-6-1(c), plus:
(A) **the** Medicare Part A deductible;
(B) skilled nursing facility care;
(C) medically necessary emergency care in a foreign country; and
(D) preventive medical care;
as defined in 760 IAC 3-6-1(d)(1), ~~through~~ 760 IAC 3-6-1(d)(2), ~~and~~ 760 IAC 3-6-1(d)(8), ~~through~~ **and** 760 IAC 3-6-1(d)(9), respectively.
(6) Standardized Medicare supplement benefit Plan F shall include only the core benefit as defined in 760 IAC 3-6-1(c), plus:
(A) **the** Medicare Part A deductible;
(B) skilled nursing facility care;
(C) **the Medicare** Part B deductible;
(D) one hundred percent (100%) of the Medicare Part B excess charges; and
(E) medically necessary emergency care in a foreign country;
as defined in 760 IAC 3-6-1(d)(1) through 760 IAC 3-6-1(d)(3), 760 IAC 3-6-1(d)(5), and 760 IAC 3-6-1(d)(8), respectively.
(7) Standardized Medicare supplement benefit high deductible Plan F shall include one hundred percent (100%) of covered expenses following the payment of the annual high deductible Plan F deductible. The covered expenses include the core benefit as defined in 760 IAC 3-6-1(c), plus:
(A) **the** Medicare Part A deductible;
(B) skilled nursing facility care;
(C) **the** Medicare Part B deductible;
(D) one hundred percent (100%) of the Medicare Part B excess charges; and
(E) medically necessary emergency care in a foreign country;
as defined in 760 IAC 3-6-1(d)(1), ~~through~~ 760 IAC 3-6-1(d)(2), ~~and~~ 760 IAC 3-6-1(d)(8), ~~through~~ **and** 760 IAC 3-6-1(d)(9), respectively. The annual high deductible Plan F deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement Plan F policy and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan F deductible shall be one thousand five hundred dollars ($1,500) for 1999 and shall be based on the calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve (12) month period ending with August of the preceding year and rounded to the nearest multiple of ten dollars ($10).
(8) Standardized Medicare supplement benefit Plan G shall include only the core benefit as defined in 760 IAC 3-6-1(c), plus:
(A) **the** Medicare Part A deductible;
(B) skilled nursing facility care;
(C) eighty percent (80%) of the Medicare Part B excess charges;
(D) medically necessary emergency care in a foreign country; and
(E) **the** at-home recovery benefit;
as defined in 760 IAC 3-6-1(d)(1), ~~through~~ 760 IAC 3-6-1(d)(2), 760 IAC 3-6-1(d)(4), 760 IAC 3-6-1(d)(8), and 760 IAC 3-6-1(d)(10), respectively.
(9) Standardized Medicare supplement benefit Plan H shall consist of only the core benefit as defined in 760 IAC 3-6-1(c), plus:
(A) **the** Medicare Part A deductible;
(B) skilled nursing facility care;
(C) **the** basic prescription drug benefit; and
(D) medically necessary emergency care in a foreign country;
as defined in 760 IAC 3-6-1(d)(1), ~~through~~ 760 IAC 3-6-1(d)(2), 760 IAC 3-6-1(d)(6), and 760 IAC 3-6-1(d)(8), respectively. **The outpatient prescription drug benefit shall not be included in a Medicare Supplement policy sold after December 31, 2005.**
(10) Standardized Medicare supplement benefit Plan I shall consist of only the core benefit as defined in 760 IAC 3-6-1(c), plus:
(A) **the** Medicare Part A deductible;
(B) skilled nursing facility care;
(C) one hundred percent (100%) of the Medicare Part B excess charges;
(D) **the** basic prescription drug benefit;
(E) medically necessary emergency care in a foreign country; and
(F) **the** at-home recovery benefit;
as defined in 760 IAC 3-6-1(d)(1), ~~through~~ 760 IAC 3-6-1(d)(2), ~~760 IAC 03-6-1(d)(5) through~~ **760 IAC 3-6-1(d)(5),** 760 IAC 3-6-1(d)(6), 760 IAC 3-6-1(d)(8), and 760 IAC 3-6-1(d)(10), respectively. **The outpatient prescription drug benefit shall not be included in a Medicare Supplement policy sold after December 31, 2005.**

(11) Standardized Medicare supplement benefit Plan J shall consist of only the core benefit as defined in 760 IAC 3-6-1(c), plus:
(A) **the** Medicare Part A deductible;
(B) skilled nursing facility care;
(C) **the** Medicare Part B deductible;
(D) one hundred percent (100%) of the Medicare Part B excess charges;
(E) **the** extended prescription drug benefit;
(F) medically necessary emergency care in a foreign country;
(G) preventive medical care; and
(H) **the** at-home recovery benefit;
as defined in 760 IAC 3-6-1(d)(1) through 760 IAC 3-6-1(d)(3), 760 IAC 3-6-1(d)(5), and 760 IAC 3-6-1(d)(7) through 760 IAC 3-6-1(d)(10), respectively.
(12) Standardized Medicare supplement benefit high deductible Plan J shall consist of one hundred percent (100%) of covered expenses following the payment of the annual high deductible Plan J deductible. The covered expenses include the core benefit as defined in 760 IAC 3-6-1(c), plus:
(A) **the** Medicare Part A deductible;
(B) skilled nursing facility care;
(C) **the** Medicare Part B deductible;
(D) one hundred percent (100%) of the Medicare Part B excess charges;
(E) **the** extended outpatient prescription drug benefit;
(F) medically necessary emergency care in a foreign country;
(G) preventive medical care benefit; and
(H) **the** at-home recovery benefit;
as defined in 760 IAC 3-6-1(d)(1) through 760 IAC 3-6-1(d)(3), 760 IAC 3-6-1(d)(5), and 760 IAC 3-6-1(d)(7) through 760 IAC 3-6-1(d)(10), respectively. **The outpatient prescription drug benefit shall not be included in a Medicare Supplement policy sold after December 31, 2005.** The annual high deductible Plan J deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement Plan J policy and shall be in addition to any other specific benefit deductibles. The annual high deductible shall be one thousand five hundred dollars ($1,500) for 1999 and shall be based on a calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve (12) month period ending with August of the preceding year and rounded to the nearest multiple of ten dollars ($10). **The outpatient prescription drug benefit shall not be included in a Medicare Supplement policy sold after December 31, 2005.**

(f) The makeup of the two (2) Medicare supplement plans mandated by the Medicare Prescription Drug Improvement and Modernization Act of 2003 are as follows:
(1) Standardized Medicare supplement benefit plan "K" shall consist of only those benefits described in 760 IAC 3-6-1(e).
(2) Standardized Medicare supplement benefit plan "L" shall consist of only those benefits described in 760 IAC 3-6-1(f).

(g) An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are as follows:
(1) Appropriate to Medicare supplement insurance.
(2) New or innovative.
(3) Not otherwise available.
(4) Cost-effective.
(5) Offered in a manner that is consistent with the goal of simplification of Medicare supplement policies.
After December 31, 2005, the innovative benefit shall not include an outpatient prescription drug benefit. *(Department of Insurance; 760 IAC 3-7-1; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2569; errata filed Sep 20, 1993, 5:00 p.m.: 17 IR 200; filed Feb 1, 1999, 10:45 a.m.: 22 IR 1974; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 10. 760 IAC 3-8-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-8-1 Medicare select policies and certificates
Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1
Affected: IC 27-8-13-1

Sec. 1. (a) This section shall apply to Medicare select policies and certificates as defined in this section.

(b) No policy or certificate may be advertised as a Medicare select policy or certificate unless it meets the requirements of this section.

(c) The following definitions apply throughout this section:
(1) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare select issuer or its network providers.
(2) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare select policy or certificate with the:
(A) administration;
(B) claims practices; or
(C) provision of services;
concerning a Medicare select issuer or its network providers.
(3) "Medicare select issuer" means an issuer offering, or seeking to offer, a Medicare select policy or certificate.
(4) "Medicare select policy" or "Medicare select certificate" means, respectively, a Medicare supplement policy or certificate that contains restricted network provisions.
(5) "Network provider" means a provider of health care, or a group of providers of health care, ~~which~~ **that** has entered into

a written agreement with the issuer to provide benefits insured under a Medicare select policy.

(6) "Restricted network provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(7) "Service area" means the geographic area approved by the commissioner of the department of insurance within which an issuer is authorized to offer a Medicare select policy.

(d) The commissioner may authorize an issuer to offer a Medicare select policy or certificate, under this section and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990, if the commissioner of the department of insurance finds that the issuer has satisfied all of the requirements of this article.

(e) A Medicare select issuer shall not issue a Medicare select policy or certificate in this state until its plan of operation has been approved by the commissioner of the department of insurance.

(f) A Medicare select issuer shall file a proposed plan of operation with the commissioner of the department of insurance in a format prescribed by the commissioner of the department of insurance. The plan of operation shall contain at least the following information:

(1) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration of the following:

(A) ~~Such~~ **The** services can be provided by network providers with reasonable promptness with respect to **the following:**

(i) Geographic location.

(ii) Hours of operation. ~~and~~

(iii) After-hour care.

The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.

(B) The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either **to:**

(i) ~~to~~ deliver adequately all services that are subject to a restricted network provision; or

(ii) ~~to~~ make appropriate referrals.

(C) There are written agreements with network providers describing specific responsibilities.

(D) Emergency care is available twenty-four (24) hours per day and seven (7) days per week.

(E) In the case of covered services that are:

(i) subject to a restricted network provision; and ~~are~~

(ii) provided on a prepaid basis;

there are written agreements with network providers prohibiting ~~such~~ **the** providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare select policy or certificate. This clause shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare select policy or certificate.

(2) A statement or map providing a clear description of the service area.

(3) A description of the **following:**

(A) The grievance procedure to be utilized.

~~(4) A description of~~ **(B)** The quality assurance program, including the following:

~~(A)~~ **(i)** The formal organizational structure.

~~(B)~~ **(ii)** The written criteria for selection, retention, and removal of network providers.

~~(C)~~ **(iii)** The procedures for evaluating quality of care provided by network providers. ~~and~~

(iv) The process to initiate corrective action when warranted.

~~(5)~~ **(4)** A list and description, by specialty, of the network providers.

~~(6)~~ **(5)** Copies of the written information proposed to be used by the issuer to comply with subsection (k).

~~(7)~~ **(6)** Any other information requested by the commissioner of the department of insurance.

(g) A Medicare select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner of the department of insurance ~~prior to~~ **before** implementing ~~such~~ **the** changes. ~~Such~~ **The** changes shall be considered approved by the commissioner of the department of insurance after thirty (30) days unless specifically disapproved.

(h) An updated list of network providers shall be filed with the commissioner of the department of insurance at least quarterly.

(i) A Medicare select policy or certificate shall not restrict payment for covered services provided by nonnetwork providers if:

(1) the services are:

(A) for symptoms requiring emergency care; or ~~are~~

(B) immediately required for an unforeseen:

(i) illness;

(ii) injury; or ~~a~~

(iii) condition; and

(2) it is not reasonable to obtain ~~such~~ **the** services through a network provider.

(j) A Medicare select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

(k) A Medicare select issuer shall make full and fair disclosure in writing of the provisions, restrictions, and limitations of

the Medicare select policy or certificate to each applicant. This disclosure shall include at least the following:

(1) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare select policy or certificate with the following:

(A) Other Medicare supplement policies or certificates offered by the issuer.

(B) Other Medicare select policies or certificates.

(2) A description, including address, phone number, and hours of operation of the network providers, including **the following:**

(A) Primary care physicians.

(B) Specialty physicians.

(C) Hospitals. ~~and~~

(D) Other providers.

(3) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized. **Except to the extent specified in the policy or certificate, expenses incurred when using out of network providers do not count toward the out-of-pocket annual limit contained in plans K and L.**

(4) A description of coverage for **the following:**

(A) Emergency and urgently needed care. ~~and~~

(B) Other out-of-service area coverage.

(5) A description of limitations on referrals to **the following:**

(A) Restricted network providers. ~~and to~~

(B) Other providers.

(6) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.

(7) A description of the Medicare select issuer's:

(A) quality assurance program; and

(B) grievance procedure.

(l) ~~Prior to~~ **Before** the sale of a Medicare select policy or certificate, a Medicare select issuer shall obtain from the applicant a signed and dated form stating that the applicant:

(1) has received the information provided under subsection (k); and ~~that the applicant~~

(2) understands the restrictions of the Medicare select policy or certificate.

(m) A Medicare select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. ~~Such~~ **The** procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures as follows:

(1) The grievance procedure shall be described in the:

(A) policies and certificates; and ~~in the~~

(B) outline of coverage.

(2) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(3) Grievances shall be:

(A) considered in a timely manner; and ~~shall be~~

(B) transmitted to appropriate decision makers who have authority to:

(i) fully investigate the issue; and

(ii) take corrective action.

(4) If a grievance is found to be valid, corrective action shall be taken promptly.

(5) All concerned parties shall be notified about the results of a grievance.

(6) The issuer shall report ~~no~~ **not** later than each March 31 to the commissioner of the department of insurance regarding its grievance procedure. The report shall:

(A) be in a format prescribed by the commissioner of the department of insurance; and ~~shall~~

(B) contain:

(i) the number of grievances filed in the past year; and

(ii) a summary of the subject, nature, and resolution of ~~such~~ **the** grievances.

(n) At the time of initial purchase, a Medicare select issuer shall make available to each applicant for a Medicare select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

(o) At the request of an individual insured under a Medicare select policy or certificate, a Medicare select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer that:

(1) has comparable or lesser benefits; and

(2) does not contain a restricted network provision.

The issuer shall make the policies or certificates available without requiring evidence of insurability after the Medicare select policy or certificate has been in force for six (6) months.

(p) For purposes of subsection (o), a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one (1) or more significant benefits not included in the Medicare select policy or certificate being replaced. As used in this subsection, "significant benefit" means coverage for:

(1) the Medicare Part A deductible;

~~(2) prescription drugs;~~

~~(3)~~ **(2)** at-home recovery services; or

~~(4)~~ **(3) Medicare** Part B excess charges.

(q) Medicare select policies and certificates shall provide for continuation of coverage in the event the Secretary of Health and Human Services determines that Medicare select policies and certificates issued under this section should be discontinued due to either the failure of the Medicare select program to be reauthorized under law or its substantial amendment and as follows:

(1) Each Medicare select issuer shall make available to each individual insured under a Medicare select policy or certifi-

cate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer that:

(A) has comparable or lesser benefits; and

(B) does not contain a restricted network provision.

The issuer shall make ~~such~~ **the** policies and certificates available without requiring evidence of insurability.

(2) For purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one (1) or more significant benefits not included in the Medicare select policy or certificate being replaced. As used in this subdivision, "significant benefit" means coverage for:

(A) the Medicare Part A deductible;

~~(B) prescription drugs;~~

~~(C)~~ **(B)** at-home recovery services; or

~~(D)~~ **(C) Medicare** Part B excess charges.

(r) A Medicare select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare select program. *(Department of Insurance; 760 IAC 3-8-1; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2570; filed Jul 18, 1996, 1:00 p.m.: 19 IR 3417; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 11. 760 IAC 3-9-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-9-1 Open enrollment

Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1
Affected: IC 27-8-13-1

Sec. 1. (a) No issuer shall:

(1) deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state; ~~nor~~ **or**

(2) discriminate in the pricing of ~~such a~~ **the** policy or certificate;

because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted ~~prior to~~ **before** or during the six (6) month period beginning with the first day of the first month in which an individual is both **at least** sixty-five (65) years of age ~~or older~~ and ~~is~~ enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this subsection without regard to age.

(b) If an applicant:

(1) qualifies under subsection (a); ~~and~~

(2) submits an application during the time period referenced in subsection (a); and

(3) as of the date of application, has had a continuous period of creditable coverage of at least six (6) months;

the issuer shall not exclude benefits based on a preexisting condition.

(c) If an applicant:

(1) qualifies under subsection (a); ~~and~~

(2) submits an application during the time period referenced in subsection (a); and

(3) as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months;

the issuer shall reduce the period of any preexisting condition exclusion by the sum of the period of creditable coverage applicable to the applicant as of the enrollment date.

(d) Except as provided in this section, **section 2 of this rule,** and 760 IAC 3-19-1, subsection (a) shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificate holder received treatment or was otherwise diagnosed during the six (6) months before the coverage became effective. *(Department of Insurance; 760 IAC 3-9-1; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2573; filed Jul 18, 1996, 1:00 p.m.: 19 IR 3419; filed Feb 1, 1999, 10:45 a.m.: 22 IR 1975; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 12. 760 IAC 3-9-2 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-9-2 Guaranteed issue for eligible persons

Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1
Affected: IC 27-8-13-1

Sec. 2. (a) As used in this section, "eligible person" means an individual described in any of the following:

(1) An individual enrolled under an employee welfare benefit plan that:

(A) provides health benefits that supplement the benefits under Medicare and the plan:

(i) terminates; or ~~the plan~~

(ii) implements a material reduction of supplemental health benefits to the individual; or ~~the individual is enrolled under an employee welfare benefit plan that~~

(B) is primary to Medicare and the plan:

(i) terminates; or ~~the plan~~

(ii) ceases to provide health benefits to the individual because the individual leaves the plan.

(2) An individual enrolled with a ~~Medicare+Choice~~ **Medicare Advantage** organization under a ~~Medicare+Choice~~ **Medicare Advantage** plan and any of the following circumstances apply:

(A) The organization's or plan's certification has been terminated or the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides.

(B) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment

on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act, where the individual has:

(i) not paid premiums on a timely basis; or ~~has~~

(ii) engaged in disruptive behavior as specified in standards under Section 1856;

or the plan is terminated for all individuals within a residence area.

(C) The individual demonstrates, in accordance with guidelines established by the Secretary, that:

(i) the organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide:

(AA) an enrollee on a timely basis medically necessary care for which benefits are available under the plan; or ~~the failure to provide such~~

(BB) covered care in accordance with applicable quality standards; or

(ii) the organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual. ~~or~~

(D) The individual meets ~~such~~ other exceptional conditions as the Secretary may provide.

(3) An individual enrolled in: ~~one (1) of the following:~~

(A) an eligible organization under a contract under Section 1876 (Medicare risk or cost);

(B) a similar organization operating under demonstration project authority, effective for periods before April 1, 1999; **or**

(C) an organization under:

(i) an agreement under Section 1833(a)(1)(A) (health care prepayment plan); or

~~(D) an organization under~~ **(ii)** a Medicare Select policy;

and the enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under ~~subsection (a)(2) of this section.~~ **subdivision (2).**

(4) An individual enrolled under a Medicare supplement policy and the enrollment ceases due to one (1) of the following:

(A) Insolvency of the issuer.

(B) Bankruptcy of the organization. ~~or~~

(C) Other involuntary termination of coverage or enrollment under the policy.

~~(B)~~ **(D)** The issuer of the policy substantially violated a material provision of the policy. ~~or~~

~~(C)~~ **(E)** The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual.

(5) An individual enrolled under a Medicare supplement policy who:

(A) terminates enrollment and subsequently enrolls with:

(i) any ~~Medicare+Choice~~ **Medicare Advantage** organization under ~~Medicare+Choice~~ **Medicare Advantage** plans;

(ii) any:

(AA) eligible organization under a contract under Section 1876 (Medicare risk or cost); or ~~any~~

(BB) similar organization operating under demonstration project authority;

(iii) an organization under an agreement under Section 1833(a)(1)(A) (health care prepayment plan); or

(iv) a Medicare Select policy; and

(B) during the first twelve (12) months after the initial termination of enrollment from the Medicare supplement policy under clause (A), the individual:

(i) terminates any subsequent enrollments in **any** plans or organizations described in clause ~~(A)(i), (A)(ii), (A)(iii), or (A)(iv);~~ **(A);** and

(ii) applies to enroll with a Medicare supplement policy.

(6) An individual who, upon first enrolling in Medicare Part B:

(A) enrolls in any ~~Medicare+Choice~~ **Medicare Advantage** plans; and

(B) disenrolls from the plans not later than twelve (12) months after the effective date of the individual's first enrollment.

(7) An individual who:

(A) enrolls in a Medicare Part D plan during the initial enrollment period;

(B) at the time of enrollment in Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs;

(C) terminates enrollment in the Medicare supplement policy; and

(D) submits evidence of enrollment in Medicare Part D along with the application for a policy described in subsection (d).

(b) With respect to eligible persons who apply to enroll under the policy not later than sixty-three (63) days after the date of the termination of enrollment described in subsection (a) and who submit evidence of the date of termination or disenrollment with the application for a Medicare supplement policy, an issuer shall not:

(1) deny or condition the issuance or effectiveness of a Medicare supplement policy described in subsection (c) that is offered and is available for issuance to new enrollees by the issuer;

(2) discriminate in the pricing of such a Medicare supplement policy because of:

(A) health status;

(B) claims experience;

(C) receipt of health care; or

(D) medical condition; and

(3) impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

(c) An eligible person as defined by subsection (a)(1), (a)(2),

(a)(3), or (a)(4) is guaranteed issuance of a standardized Medicare supplement benefit:

(1) Plan A;

(2) Plan B;

(3) Plan C; ~~or~~

(4) Plan F **(including Plan F with a high deductible);**

(5) Plan K; or

(6) Plan L;

offered by any issuer.

(d) An eligible person as defined by subsection (a)(5) is guaranteed issuance of the same standardized Medicare supplement policy in which the individual was most recently ~~previously~~ enrolled, if available from the same issuer, or, if not ~~so~~ available, a policy described in subsection (c). **After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit, a Medicare supplement policy referenced above is:**

(1) the policy available from the same issuer but modified to remove outpatient prescription drug coverage; or

(2) at the election of the policyholder, a:

(A) Plan A;

(B) Plan B;

(C) Plan C;

(D) Plan F (including Plan with a high deductible);

(E) Plan K; or

(F) Plan L;

policy that is offered by any issuer.

(e) In the case of an individual described in subsection (a)(7), the guaranteed issue period:

(1) begins on the date the individual receives notice under Section 1882(v)(2)(B) of the Social Security Act from the Medicare supplement issuer during the sixty (60) day period immediately preceding the initial Part D enrollment period; and

(2) ends on the date that is sixty-three (63) days after the effective date of the individual's coverage under Medicare Part D.

~~(e)~~ **(f)** An eligible person as defined by subsection (a)(6) is guaranteed issuance of any standardized Medicare supplement policy offered by any issuer.

~~(f)~~ **(g)** At the time of an event described in subsection (a), either the:

(1) organization that terminates the contract or agreement; ~~the~~

(2) employee welfare benefit plan; ~~the~~

(3) issuer of the policy; or ~~the~~

(4) administrator of the plan being terminated;

shall notify the individual of his or her rights under this section.

~~(g)~~ **(h)** At the time of an event described in subsection (a), because of which an individual ceases enrollment under a contract or agreement, policy, or plan, either the:

(1) organization that offers the contract or agreement; ~~the~~

(2) issuer offering the policy; or ~~the~~

(3) administrator of the plan;

shall notify the individual of his or her rights under this section. ~~Such~~ **The** notice shall be communicated to the individual within ten (10) working days of the issuer receiving notification of disenrollment. *(Department of Insurance; 760 IAC 3-9-2; filed Feb 1, 1999, 10:45 a.m.: 22 IR 1976; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 13. 760 IAC 3-11-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-11-1 Loss ratio standards and refund or credit of premium

Authority: IC 27-8-13-10; IC 27-8-13-12
Affected: IC 27-8-13-1

Sec. 1. (a) Loss ratio standards are as follows:

(1) A Medicare supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificate holders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form **at least either of the following:**

(A) ~~at least~~ Seventy-five percent (75%) of the aggregate amount of premiums earned in the case of group policies.

~~or~~

(B) ~~at least~~ Sixty-five percent (65%) of the aggregate amount of premiums earned in the case of individual policies, calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for ~~such~~ **the** period and in accordance with accepted actuarial principles and practices. **Incurred health care expenses where coverage is provided by a health maintenance organization shall not include the following:**

(i) Home office and overhead costs.

(ii) Advertising costs.

(iii) Commissions and other acquisition costs.

(iv) Taxes.

(v) Capital costs.

(vi) Administrative costs.

(vii) Claims processing costs.

(2) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio

standards.

(3) For policies issued any time ~~prior to~~ **before** January 1, 1992, expected claims in relation to premiums shall meet the following:

(A) The originally filed anticipated loss ratio when combined with the actual experience since inception.

(B) The appropriate loss ratio ~~requirement~~ **requirements** from subdivision (1):

(i) when combined with actual experience beginning with April 1, 1996, to date; **and**

~~(C) The appropriate loss ratio requirements from subdivision (1)~~ **(ii)** over the entire future period for which the rates are computed to provide coverage.

~~(D)~~ **(C)** In meeting the tests in clauses (A) ~~through (C)~~ **and (B)** and for purposes of attaining credibility, an issuer may combine experience under policy forms that provide substantially similar coverage. Once a combined form is adopted, the issuer may not separate the experience except with the approval of the commissioner.

(b) Refund or credit calculation is as follows:

(1) An issuer shall collect and file with the commissioner of the department of insurance by May 31 of each year the data contained in the applicable reporting form contained in this section for each type in a standard Medicare supplement benefit plan.

(2) If, on the basis of the experience as reported, the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(3) For purposes of this section, the issuer of policies or certificates issued ~~prior to~~ **before** January 1, 1992, shall make the refund or credit calculation separately for all individual policies (including all group policies subject to an individual loss ratio standard when issued) combined and all other group policies combined for experience after April 1, 1996. The first ~~such~~ report shall be due by May 31, 1998.

(4) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services but in no event shall it be less than the average rate of interest for 13-week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

(c) An issuer of Medicare supplement policies and certificates issued before or after the effective date of this article in this state shall file annually its rates, rating schedule, and supporting documentation, including ratios of incurred losses to earned premiums by policy duration for approval by the commissioner of the department of insurance in accordance with the filing requirements and procedures prescribed by the commissioner of the department of insurance. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. ~~Such~~ **The** demonstration shall exclude active life reserves. An expected third-year loss ratio, which is greater than or equal to the applicable percentage, shall be demonstrated for policies or certificates in force less than three (3) years.

(d) As soon as practicable, but ~~prior to~~ **before** the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this state shall file with the commissioner of the department of insurance, in accordance with the applicable filing procedures of this state, the following:

(1) Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. ~~Such~~ Supporting documents as necessary to justify the adjustment shall accompany the filing.

(2) An issuer shall make ~~such~~ premium adjustments as are:

(A) necessary to produce an expected loss ratio under ~~such~~ **the** policy or certificate as will conform with minimum loss ratio standards for Medicare supplement policies; and ~~which are~~

(B) expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for ~~such~~ **the** Medicare supplement policies or certificates.

No premium adjustment, which would modify the loss ratio experience under the policy other than the adjustments described in this subdivision, shall be made with respect to a policy at any time other than upon its renewal date or anniversary date.

(3) If an issuer fails to make premium adjustments acceptable to the commissioner of the department of insurance, the commissioner of the department of insurance may order:

(A) premium adjustments;

(B) refunds; or

(C) premium credits;

deemed necessary to achieve the loss ratio required by this section.

(4) Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. ~~Such~~ **The** riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

(e) The commissioner of the department of insurance may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after the effective date of this article if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for ~~such~~ **the** reporting period. Public notice of ~~such~~ **the** hearing shall be furnished in a manner deemed appropriate by the commissioner of the department of insurance.

(f) The following forms shall be used for the calculations and reporting requirements of this rule:

MEDICARE SUPPLEMENT REFUND CALCULATION FORM
FOR CALENDAR YEAR _____

TYPE[1] _____ SMSBP[2] _____
For the State of _____ Company Name _____
NAIC Group Code _____ NAIC Company Code _____
Address _____ Person Completing Exhibit _____
Title _____ Telephone Number _____

Line	(a) Earned Premium[3]	(b) Incurred Claims[4]
1. Current Year's Experience		
a. Total (all policy years)		
b. Current year's issues[5]		
c. Net (for reporting purposes = 1a - 1b)	_____	_____
2. Past Years' Experience (All Policy Years)	_____	_____
3. Total Experience (Net Current Year + Past Year's Experience)	_____	_____

4. Refunds Last Year (Excluding Interest) _____
5. Previous Since Inception (Excluding Interest) _____
6. Refunds Since Inception (Excluding Interest) _____
7. Benchmark Ratio Since Inception (SEE WORKSHEET FOR RATIO 1) _____
8. Experienced Ratio Since Inception _____

$$\frac{\text{Total Actual Incurred Claims (line 3, col. b)}}{\text{Total Earned Prem. (line 3, col. a) - Refunds Since Inception (line 6)}} = \text{Ratio 2}$$

9. Life Years Exposed Since Inception _____

If the Experience Ratio is less than the Benchmark Ratio, and there are more than five hundred (500) life years exposure, then proceed to calculation of refund.

10. Tolerance Permitted (obtained from credibility table)_____

Medicare Supplement Credibility Table

Life Years Exposed Since Inception	Tolerance
10,000 +	0.0%
5,000–9,999	5.0%
2,500–4,999	7.5%
1,000–2,499	10.0%
500–999	15.0%

If less than 500, no credibility.

MEDICARE SUPPLEMENT REFUND CALCULATION FORM
FOR CALENDAR YEAR _____

TYPE[1] _____ SMSBP[2] _____
For the State of _____ Company Name _____

NAIC Group Code _____ NAIC Company Code _____
Address _____ Person Completing Exhibit _____
Title _____ Telephone Number _____

11. Adjustment to Incurred Claims for Credibility _____

Ratio 3 = Ratio 2 + Tolerance

If Ratio 3 is more than Benchmark Ratio (Ratio 1), a refund or credit to premium is not required.
If Ratio 3 is less than the Benchmark Ratio, then proceed.

12. Adjusted Incurred Claims _____

[Total Earned Premiums (line 3, col. a) - Refunds Since Inception (line 6)] × Ratio 3 (line 11)

13. Refund = Total Earned Premiums (line 3, col. a) - Refunds Since Inception (line 6).

$$\frac{\text{Adjusted Incurred Claims (line 12)}}{\text{Benchmark Ratio (Ratio 1)}}$$

If the amount on line 13 is less than.005 times the annualized premium in force as of December 31 of the reporting year, then no refund is made. Otherwise, the amount on line 13 is to be refunded or credited, and a description of the refund and/or credit against premiums to be used must be attached to this form.

[1]Individual, group, individual Medicare Select, or group Medicare Select only.

[2]"SMSBP" = Standardized Medicare Supplement Benefit Plan.

[3]Includes Modal Loadings and Fees Charged.

[4]Excluded Active Life Reserves.

[5]This is to be used as "Issue Year Earned Premium" for Year 1 of the next year's "Worksheet for Calculation of Benchmark Ratios".

I certify that the above information and calculations are true and accurate to the best of my knowledge and belief.

_____
Signature

_____
Name–Please Type

_____
Title

_____
Date

REPORTING FORM FOR THE CALCULATION OF BENCHMARK
RATIO SINCE INCEPTION FOR GROUP POLICIES
FOR CALENDAR YEAR_____

TYPE[1] _____ SMSBP[2] _____
For the State of _____ Company Name _____
NAIC Group Code _____ NAIC Company Code _____
Address _____ Person Completing Exhibit _____
Title _____ Telephone Number _____

(a)[3]	(b)[4]	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o)[5]
Year	Earned Premium	Factor	(b)×(c)	Cumulative Loss Ratio	(d)×(e)	Factor	(b)×(g)	Cumulative Loss Ratio	(h)×(i)	Policy Year Loss Ratio
1		2.770		0.507		0.000		0.000		0.46
2		4.175		0.567		0.000		0.000		0.63
3		4.175		0.567		1.194		0.759		0.75
4		4.175		0.567		2.245		0.771		0.77
5		4.175		0.567		3.170		0.782		0.80
6		4.175		0.567		3.998		0.792		0.82
7		4.175		0.567		4.754		0.802		0.84

8		4.175		0.567		5.445		0.811		0.87
9		4.175		0.567		6.075		0.818		0.88
10		4.175		0.567		6.650		0.824		0.88
11		4.175		0.567		7.176		0.828		0.88
12		4.175		0.567		7.655		0.831		0.88
13		4.175		0.567		8.093		0.834		0.89
14		4.175		0.567		8.493		0.837		0.89
15		4.175		0.567		8.684		0.838		0.89
Total:			(k):		(l):		(m):		(n):	

Benchmark Ratio Since Inception: (l + n)/(k + m): _____

[1]Individual, Group, Individual Medicare Select, or Group Medicare Select Only.

[2]"SMSBP" = Standardized Medicare Supplement Benefit Plan - Use "P" for pre-standardized plans.

[3]Year 1 is the current calendar year - 1. Year 2 is the current calendar year - 2 (etc.) (Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.)

[4]For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

[5]These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

REPORTING FORM FOR THE CALCULATION OF BENCHMARK
RATIO SINCE INCEPTION FOR INDIVIDUAL POLICIES
FOR CALENDAR YEAR_____

TYPE[1] _____ SMSBP[2] _____

For the State of _____ Company Name _____

NAIC Group Code _____ NAIC Company Code_____

Address _____ Person Completing Exhibit _____

Title _____ Telephone Number _____

(a)[3]	(b)[4]	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o)[5]
Year	Earned Premium	Factor	(b)×(c)	Cumulative Loss Ratio	(d)×(e)	Factor	(b)×(g)	Cumulative Loss Ratio	(h)×(i)	Policy Year Loss Ratio
1		2.770		0.442		0.000		0.000		0.40
2		4.175		0.493		0.000		0.000		0.55
3		4.175		0.493		1.194		0.659		0.65
4		4.175		0.493		2.245		0.669		0.67
5		4.175		0.493		3.170		0.678		0.69
6		4.175		0.493		3.998		0.686		0.71
7		4.175		0.493		4.754		0.695		0.73
8		4.175		0.493		5.445		0.702		0.75
9		4.175		0.493		6.075		0.708		0.76
10		4.175		0.493		6.650		0.713		0.76
11		4.175		0.493		7.176		0.717		0.76
12		4.175		0.493		7.655		0.720		0.77
13		4.175		0.493		8.093		0.723		0.77
14		4.175		0.493		8.493		0.725		0.77
15		4.175		0.493		8.684		0.725		0.77
Total:			(k):		(l):		(m):		(n):	

Benchmark Ratio Since Inception: (l + n)/(k + m): _____

[1]Individual, Group, Individual Medicare Select, or Group Medicare Select Only.

[2]"SMSBP" = Standardized Medicare Supplement Benefit Plan - Use "P" for pre-standardized plans.

[3]Year 1 is the current calendar year - 1. Year 2 is the current calendar year - 2 (etc.) (Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.)

[4]For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

[5]These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

(Department of Insurance; 760 IAC 3-11-1; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2573; filed Jul 18, 1996, 1:00 p.m.: 19 IR 3419; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 14. 760 IAC 3-12-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-12-1 Filing and approval of policies and certificates and premium rates

Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1; IC 27-8-13-12
Affected: IC 27-8-13-1

Sec. 1. (a) An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the commissioner of the department of insurance in accordance with filing requirements and procedures prescribed by the commissioner of the department of insurance.

(b) An issuer shall file any riders or amendments to policy or certificate forms to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 only with the commissioner in the state in which the policy or certificate was issued.

~~(b)~~ **(c)** An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the commissioner of the department of insurance in accordance with the filing requirements and procedures prescribed by the commissioner of the department of insurance.

~~(c)~~ **(d)** Except as provided in subsection ~~(d),~~ **(e),** an issuer shall not file for approval more than one (1) form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

~~(d)~~ **(e)** An issuer may offer, with the approval of the commissioner of the department of insurance, up to four (4) additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one (1) for each of the following cases:

(1) The inclusion of new or innovative benefits.

(2) The addition of either:

(A) direct response or agent marketing methods; **or**

~~(3) The addition of either~~ **(B)** guaranteed issue or underwritten coverage.

~~(4)~~ **(3)** The offering of coverage to individuals eligible for Medicare by reason of disability.

~~(e)~~ **(f)** As used in this section, "type" means:

(1) an individual policy;

(2) a group policy;

(3) an individual Medicare select policy; or

(4) a group Medicare select policy.

~~(f)~~ **(g)** Except as provided in subdivision (1), an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this article that has been approved by the commissioner of the department of insurance. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months and as follows:

(1) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner of the department of insurance in writing its decision at least thirty (30) days ~~prior to~~ **before** discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner of the department of insurance, the issuer shall no longer offer for sale the policy form or certificate form in this state.

(2) An issuer that discontinues the availability of a policy form or certificate form under subdivision (1) shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the commissioner of the department of insurance of the discontinuance. The period of discontinuance may be reduced if the commissioner of the department of insurance determines that a shorter period is appropriate.

~~(g)~~ **(h)** For purposes of subsection ~~(f),~~ **(g),** this subsection, and subsection ~~(h),~~ **(i),** the sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance.

~~(h)~~ **(i)** A change in the rating structure or methodology shall be considered a discontinuance under subsection ~~(f)~~ **(g)** unless the issuer: ~~complies with the following requirements:~~

(1) ~~The~~ issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner of the department of insurance, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates; **and**

(2) ~~The~~ issuer does not subsequently put into effect a change

of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner of the department of insurance may approve a change to the differential ~~which~~ **that** is in the public interest.

~~(i)~~ **(j)** Except as provided in subsection ~~(j),~~ **(k),** the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in 760 IAC 3-11.

~~(j)~~ **(k)** Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation. *(Department of Insurance; 760 IAC 3-12-1; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2580; filed Jul 18, 1996, 1:00 p.m.: 19 IR 3430; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 15. 760 IAC 3-14-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-14-1 Required disclosure provisions

Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1; IC 27-8-13-12; IC 27-8-13-14; IC 27-8-13-15; IC 27-8-13-16
Affected: IC 27-8-13-1

Sec. 1. (a) General provisions are as follows:

(1) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of ~~such~~ **the** provision shall be consistent with the type of contract issued. ~~Such~~ **The** provision shall be:

(A) appropriately captioned;

(B) appear on the first page of the policy; and

(C) include any:

(i) reservation by the issuer of the right to change premiums; and ~~any~~

(ii) automatic renewal premium increases based on the policyholder's age.

(2) Except for riders or endorsements by which the issuer:

(A) effectuates a request made in writing by the insured;

(B) exercises a specifically reserved right under a Medicare supplement policy; or

(C) is required to reduce or eliminate benefits to avoid duplication of Medicare benefits;

all riders or endorsements added to a Medicare supplement policy after the date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, ~~such~~ **the** premium charge shall be set forth in the policy.

(3) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as:

(A) "usual and customary";

(B) "reasonable and customary"; or

(C) words of similar import.

(4) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, ~~such~~ **the** limitations shall:

(A) appear as a separate paragraph of the policy; and

(B) be labeled as "Preexisting Condition Limitations".

(5) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificate holder shall have the right to:

(A) return the policy or certificate within thirty (30) days of its delivery; and ~~to~~

(B) have the premium refunded;

if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

(6) Issuers of accident and sickness policies or certificates that provide hospital or medical expense coverage on an expense incurred or indemnity basis to a person eligible for Medicare shall provide to those applicants a Guide to Health Insurance for People with Medicare (Guide) in:

(A) the form developed jointly by the National Association of Insurance Commissioners and the ~~Health Care Financing Administration~~ **Center for Medicare Services;** and ~~in~~

(B) a type size no smaller than 12-point type.

Delivery of the Guide shall be made whether or not ~~such~~ **the** policies or certificates are advertised, solicited, or issued as Medicare supplement policies or certificates as defined in this article. Except in the case of direct response issuers, delivery of the Guide shall be made to the applicant at the time of application and acknowledgement of receipt of the Guide shall be obtained by the issuer. Direct response issuers shall deliver the Guide to the applicant upon request, but not later than at the time the policy is delivered.

As used in this section, "form" means the language, format, type size, type proportional spacing, bold character, and line spacing.

(b) Notice requirements are as follows:

(1) As soon as practicable, but ~~no~~ **not** later than thirty (30) days ~~prior to~~ **before** the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificate holders of modifications it has made to Medicare supplement insurance policies or certificates in a format acceptable to the commissioner of the department of insurance. ~~Such~~ **The** notice shall do the following:

(A) Include a description of **the following:**

(i) Revisions to the Medicare program. ~~and a description of~~

(ii) Each modification made to the coverage provided under the Medicare supplement policy or certificate.

(B) Inform each policyholder or certificate holder as to when any premium adjustment is to be made due to changes in Medicare.

(2) The notice of benefit modifications and any premium adjustments shall be in:

(A) outline form; and ~~in~~

(B) clear and simple terms;

so as to facilitate comprehension.

(3) ~~Such~~ **The** notices shall not:

(A) contain; or

(B) be accompanied by;

any solicitation.

(c) Issuers shall comply with any notice requirements of the Medicare Prescription Drug Improvement and Modernization Act of 2003.

~~(c)~~ **(d)** The outline of coverage requirements for Medicare supplement policies are as follows:

(1) Issuers shall:

(A) provide an outline of coverage to all applicants at the time application is presented to the prospective applicant; and

(B) except for direct response policies, ~~shall~~ obtain an acknowledgement of receipt of ~~such~~ **the** outline from the applicant.

(2) If:

(A) an outline of coverage is provided at the time of application; and

(B) the Medicare supplement policy or certificate is issued on a basis that would require revision of the outline;

a substitute outline of coverage properly describing the policy or certificate shall accompany ~~such~~ **the** policy or certificate when it is delivered and contain the following statement, in ~~no less~~ **not smaller** than 12-point type, immediately above the company name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application, and the coverage originally applied for has not been issued.".

(3) The outline of coverage provided to applicants under this section consists of the following:

(A) The cover page described in subsection ~~(c).~~ **(f).**

(B) Premium information on or immediately following the cover page.

(C) Disclosure pages described in subsection ~~(f).~~ **(g).**

(D) Charts displaying the features of each benefit plan offered by the issuer described in subsection ~~(g).~~ **(h).**

The outline of coverage shall be in the language and format prescribed in subsections ~~(c)~~ **(f)** through ~~(g)~~ **(h)** in ~~no less~~ **not smaller** than 12-point type. Plans A through J, described in 760 IAC 3-7, shall be shown on the cover page, and the plans that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

~~(d)~~ **(e)** The following are notices regarding policies or certificates that are not Medicare supplement policies:

(1) Any:

(A) accident and sickness insurance policy or certificate, other than a Medicare supplement policy;

(B) policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. 1395 et seq.);

(C) disability income policy; or

(D) other policy identified in 760 IAC 3-1-1(b);

issued for delivery in this state to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy or, if no outline of coverage is delivered, to the first page of the policy or certificate delivered to insureds. The notice shall be in ~~no less~~ **not smaller** than 12-point type and shall contain the following language:

"THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CONTRACT]. If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company.".

(2) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in subdivision (1) shall disclose, using the applicable statement in this subdivision, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as part of, or together with, the application for the policy or certificate. The following instructions and forms shall be used for the disclosure statement regarding duplication of Medicare:

DISCLOSURE STATEMENTS

Instructions for Use of the Disclosure Statements for Health Insurance Policies Sold to Medicare Beneficiaries that Duplicate Medicare

1. Section 1882(d) of the federal Social Security Act, 42 U.S.C. 1395ss, prohibits the sale of a health insurance policy (the term "policy" or "policies" includes certificates) that duplicates Medicare benefits unless it will pay benefits without regard to other health coverage and it includes the prescribed disclosure statement on or together with the application.

2. All types of health insurance policies that duplicate Medicare shall include one (1) of the attached disclosure statements, according to the particular policy type involved, on the application or together with the application. The disclosure statement may not vary from the attached statements in terms of language or format (type size, type proportional spacing, bold character, line spacing, and usage of boxes around text).

3. State and federal law prohibits insurers from selling a Medicare supplement policy to a person that already has a Medicare supplement policy except as a replacement.
4. Property/casualty and life insurance policies are not considered health insurance.
5. Disability income policies are not considered to provide benefits that duplicate Medicare.
6. Long term care insurance policies that coordinate with Medicare and other health insurance are not considered to provide benefits that duplicate Medicare.
7. The federal law does not preempt state laws that are more stringent than the federal requirements.
8. The federal law does not preempt existing state form filing requirements.
9. Section 1882 of the federal Social Security Act was amended to allow for alternative disclosure statements. Carriers may use either the original disclosure statements or the alternative disclosure statements and not use both simultaneously.

*****

[Original disclosure statement for policies that provide benefits for expenses incurred for an accidental injury only.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- other approved items and services

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

[Original disclosure statement for policies that reimburse expenses incurred for specified disease(s) or other specified impairment(s). This includes expense incurred cancer, specified disease, and other types of health insurance policies that limit reimbursement to named medical conditions.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one (1) of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

[Original disclosure statement for policies that provide benefits for specified limited services.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any of the services covered by the policy are also covered by Medicare

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- other approved items and services

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you

already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

[Original disclosure statement for policies that pay fixed dollar amounts for specified diseases or other specified impairments. This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one (1) of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits because Medicare generally pays for most of the expenses for the diagnosis and treatment of the specific conditions or diagnoses named in the policy.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

[Original disclosure statement for policies that provide benefits for both expenses incurred and fixed indemnity basis.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any expenses or services covered by the policy are also covered by Medicare; or
- it pays the fixed dollar amount stated in the policy and Medicare covers the same event

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice care
- other approved items and services

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

[Original disclosure statement for indemnity policies and other policies that pay a fixed dollar amount per day, excluding long term care policies.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays a fixed dollar amount, regardless of your expenses, for each day you meet the policy conditions. It does not pay your Medicare deductible or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any expenses or services covered by the policy are also covered by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice care
- other approved items and services

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

[Original disclosure statement for other health insurance policies not specifically identified in the previous statements.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

• the benefits stated in the policy and coverage for the same event is provided by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

• hospitalization
• physician services
• hospice
• other approved items and services

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

[Alternative disclosure statement for policies that provide benefits for expenses incurred for an accidental injury only.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

• hospitalization
• physician services
• other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

[Alternative disclosure statement for policies that provide benefits for specified limited services.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits under this policy.

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

• hospitalization
• physician services
• other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

[Alternative disclosure statement for policies that reimburse expenses incurred for specified diseases or other specified impairments. This includes expense incurred cancer, specified disease, and other types of health insurance policies that limit reimbursement to named medical conditions.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger

the payment of benefits from this policy. Medicare generally pays for most or all of these expenses.
This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one (1) of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.
Medicare generally pays for most or all of these expenses.
Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:
- hospitalization
- physician services
- hospice
- other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.
✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

[Alternative disclosure statement for policies that pay fixed dollar amounts for specified diseases or other specified impairments. This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.
This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one (1) of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.
Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:
- hospitalization
- physician services
- hospice
- other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.
✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

[Alternative disclosure statement for indemnity policies and other policies that pay a fixed dollar amount per day, excluding long term care policies.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.
This insurance pays a fixed dollar amount, regardless of your expenses, for each day you meet the policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.
Medicare generally pays for most or all of these expenses.
Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:
- hospitalization
- physician services
- hospice
- other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.
✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

[Alternative disclosure statement for policies that provide benefits upon both an expense incurred and fixed indemnity basis.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.
This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed

amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice care
- other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

[Alternative disclosure statement for other health insurance policies not specifically identified in the preceding statements.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

~~(c)~~ **(f)** The cover page of the outline described in subsection ~~(c)~~ **(d)** shall be in the format as follows:

(COMPANY NAME)

Outline of Medicare Supplement Coverage-Cover Page:

Benefit Plan(s) _____(insert letter(s) of plan(s) being offered)

~~Medicare supplement insurance can be sold in only ten standard plans, plus two high deductible plans. This chart shows~~ **These charts show** the benefits included in each ~~plan.~~ **of the standard Medicare supplement plans.** Every company must make available Plan "A". Some of the other plans may not be available from every company.

Basic Benefits: ~~Included in All~~ **For** Plans **A – J.**

Hospitalization: Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.

Medical Expenses: Part B coinsurance (generally 20% of Medicare approved expenses).

Blood: First three pints of blood each year.

A	B	C	D	E	F / F*	G	H	I	J / J*
Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits
		Skilled Nursing **Facility** Coinsurance	Skilled Nursing **Facility** Coinsurance	Skilled Nursing **Facility** Coinsurance	Skilled Nursing **Facility** Coinsurance	Skilled Nursing **Facility** Coinsurance	Skilled Nursing **Facility** Coinsurance	Skilled Nursing **Facility** Coinsurance	Skilled Nursing **Facility** Coinsurance
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible
		Part B Deductible			Part B Deductible				Part B Deductible

			Part B Excess (100%)	Part B Excess (80%)		Part B Excess (100%)	Part B Excess (100%)
Foreign Travel Emergency	Foreign Travel Emergency At-Home Recovery	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency At-Home Recovery	Foreign Travel Emergency	Foreign Travel Emergency At-Home Recovery	Foreign Travel Emergency At-Home Recovery
					~~Basic Drugs ($1,250 Limit)~~	~~Basic Drugs ($1,250 Limit)~~	~~Basic Drugs ($3,000 Limit)~~
		Preventive Care **NOT covered by Medicare**					Preventive Care **NOT covered by Medicare**

*Plans F and J also have an option called a high deductible Plan F and a high deductible Plan J. These high deductible plans pay the same or offer the same benefits as Plans F and J after one has paid a calendar year [$1,500] deductible. Benefits from high deductible Plans F and J will not begin until out-of-pocket expenses are [$1,500]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. These expenses include the Medicare deductibles for Part A and Part B, but do not include ~~in Plan J,~~ the plan's separate ~~prescription drug deductible or, in Plans F and J, the plans' separate~~ foreign travel emergency deductible.

Basic Benefits for Plans K and L include similar services as Plans A-J, but cost-sharing for the basic benefits is at different levels.

J	K**	L**
Basic Benefits	**100% of Part A Hospitalization Coinsurance plus coverage for 365 Days after Medicare Benefits End 50% Hospice cost-sharing 50% of Medicare-eligible expenses for the first three pints of blood 50% Part B Coinsurance, except 100% Coinsurance for Part B Preventive Services**	**100% of Part A Hospitalization Coinsurance plus coverage for 365 Days after Medicare Benefits 75% Hospice cost-sharing 75% of Medicare-eligible expenses for the first three pints of blood 75% Part B Coinsurance, except 100% coinsurance for Part B Preventive Services**
Skilled Nursing Coinsurance	**50% Skilled Nursing Facility Coinsurance**	**75% Skilled Nursing Facility Coinsurance**
Part A Deductible	**100% Part A Deductible**	**75% Part A Deductible**
Part B Deductible		
Part B Excess (100%)		
Foreign Travel Emergency		
At-home recovery		
Preventive Care NOT covered by Medicare		
	$[4000] Out-of-Pocket Annual Limit* **	**$[2000] Out-of-Pocket Annual Limit*** **

****Plans K and L provide for different cost-sharing for items and services than Plans A-J.**
Once you reach the annual limit, the plan pays 100% of the Medicare copayments, coinsurance, and deductibles for the rest of the calendar year. The out-of-pocket annual limit does NOT include charges from your provider that exceed Medicare approved amounts, called "Excess Charges". You will be responsible for paying excess charges.
****The out-of-pocket annual limit will increase each year for inflation.**

~~(f)~~ **(g)** The following items shall be included in the outline of coverage in the order prescribed:

PREMIUM INFORMATION [Boldface Type]

We [insert issuer's name] can only raise your premium if we raise the premium for all policies like yours in this state. [If the premium is based on the increasing age of the insured, include information specifying when the premiums will change.]

DISCLOSURES [Boldface Type]

Use this outline to compare benefits and premiums among policies.

READ YOUR POLICY VERY CAREFULLY [Boldface Type]

This is only an outline describing your policy's most important

features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company.
RIGHT TO RETURN POLICY [Boldface Type]
If you find that you are not satisfied with your policy, you may return it to [insert issuer's address]. If you send the policy back to us within 30 days after you receive it, we will treat the policy as if it had never been issued and return all of your payments.
POLICY REPLACEMENT [Boldface Type]
If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it.
NOTICE [Boldface Type]
The policy may not fully cover all of your medical costs.
[for agents:]
Neither [insert company's name] nor its agents are connected with Medicare.
[for direct response:]
[insert company's name] is not connected with Medicare.
This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security office or consult "The Medicare Handbook" for more details.
COMPLETE ANSWERS ARE VERY IMPORTANT [Boldface Type]
When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and refuse to pay any claims if you leave out or falsify important medical information. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]
Review the application carefully before you sign it. Be certain that all information has been properly recorded.

~~(g)~~ **(h)** The NAIC Model Laws, Regulations and Guidelines, Vol. IV, pages ~~651-40~~ **651-54** through ~~651-67,~~ **651-87.** Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act ~~(April 1998)~~ **(September 2004)** are hereby incorporated by reference as if fully set out herein as the format for the charts described in subsection ~~(c), except that on page 651-59, the Part B excess charges benefits for Plan "H" medical expenses is changed from eighty percent (80%) to zero (0) in the "Plan Pays" column.~~ **(d).**
(Department of Insurance; 760 IAC 3-14-1; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2581; errata filed Sep 20, 1993, 5:00 p.m.: 17 IR 200; filed Jul 18, 1996, 1:00 p.m.: 19 IR 3431; errata filed Sep 24, 1996, 10:30 a.m.: 20 IR 332; filed Feb 1, 1999, 10:45 a.m.: 22 IR 1978; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 16. 760 IAC 3-15-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-15-1 Application forms and replacement coverage
Authority: IC 27-8-13-10; IC 27-8-13-16
Affected: IC 27-8-13-1

Sec. 1. (a) Application forms shall include statements and questions as established in this subsection designed to elicit information as to whether, as of the date of the application, the applicant **currently** has another Medicare supplement, **Medicare Advantage, or Medicaid coverage** or ~~other~~ **another** health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing questions and statements may be used, such as the following:

(1) The following statements:

(A) You do not need more than one (1) Medicare supplement policy.

(B) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.

(C) You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.

(D) **If, after purchasing this policy, you become eligible for Medicaid,** the benefits and premiums under your Medicare supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for twenty-four (24) months. You must request this suspension within ninety (90) days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your **suspended Medicare supplement** policy **(or, if that is no longer available, a substantially equivalent policy)** will be reinstituted if requested within ninety (90) days of losing Medicaid eligibility. **If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage but will otherwise be substantially equivalent to your coverage before the date of the suspension.**

(E) If you are eligible for and have enrolled in a Medicare supplement policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, while you are covered under the employer or union-based group health plan. If you suspend your Medicare supplement policy under these circumstances and later lose your employer or union-based group health plan, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstituted if requested within ninety (90) days of losing your employer or union-based group health plan. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage but will otherwise be substantially

equivalent to your coverage before the date of the suspension.

~~(E)~~ **(F)** Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary (SLMB).

(2) ~~The following~~ **If you lost or are losing other health insurance coverage and received a notice from your prior insurer saying you were eligible for guaranteed issue of a Medicare supplement insurance policy, or that you had certain rights to buy such a policy, you may be guaranteed acceptance in one (1) or more of our Medicare supplement plans. Please include a copy of the notice from your prior insurer with your application. Please answer all** questions:

~~(A)~~ To the best of your knowledge,

~~(i) Do you have another Medicare supplement policy or certificate in force?~~

~~(AA) If so, with which company?~~

~~(BB) If so, do you intend to replace your current Medicare supplement policy with this policy [certificate].~~

~~(ii) Do you have any other health insurance coverage that provides benefits similar to this Medicare supplement policy?~~

~~(AA) If so, with which company?~~

~~(BB) What kind of policy?~~

~~(iii) Are you covered for medical assistance through the state Medicaid program:~~

~~(AA) As a Specified Low-Income Medicare Beneficiary (SLMB)?~~

~~(BB) As a Qualified Medicare Beneficiary (QMB)?~~

~~(CC) For other Medicaid medical benefits?~~

(A) Did you turn age sixty-five (65) in the last six (6) months?

Yes _____ No _____

(B) Did you enroll in Medicare Part B in the last six (6) months?

Yes _____ No _____

(C) If yes, what is the effective date? _____

(D) Are you covered for medical assistance through the state Medicaid program?

[NOTE TO APPLICANT: If you are participating in a "Spend-Down Program" and have not met your "Share of Cost," please answer NO to this question.]

Yes _____ No _____

(i) If yes, will Medicaid pay your premiums for this Medicare supplement policy?

Yes _____ No _____

(ii) Do you receive any benefits from Medicaid OTHER THAN payments toward your Medicare Part B premium?

Yes _____ No _____

(E) If you had coverage from any Medicare plan other than original Medicare within the past sixty-three (63) days (for example, a Medicare Advantage plan, or a Medicare HMO or PPO), fill in your start and end dates below. If you are still covered under this plan, leave "END" blank.

Start ___/___/____ END ___/___/___

(F) If you are still covered under the Medicare plan, do you intend to replace your current coverage with this new Medicare supplement policy?

Yes _____ No _____

(G) Was this your first time in this type of Medicare plan?

Yes _____ No _____

(H) Did you drop a Medicare supplement policy to enroll in the Medicare plan?

Yes _____ No _____

(I) Do you have another Medicare supplement policy in force?

Yes _____ No _____

(i) If so, with what company, and what plan do you have [optional for Direct Mailers]?

(ii) If so, do you intend to replace your current Medicare supplement policy with this policy?

Yes _____ No _____

(J) Have you had coverage under any other health insurance within the past sixty-three (63) days? (For example, an employer, union, or individual plan)

Yes _____ No _____

(i) If so, with what company and what kind of policy?

(ii) What are your dates of coverage under the other policy?

START ___/___/___ END ___/___/___

If you are still covered under the other policy, leave "END" blank.

(b) Agents shall list any other health insurance policies they have sold to the applicant. List policies sold **that:**

(1) ~~that~~ are still in force; and

(2) in the past five (5) years, ~~that~~ are no longer in force.

(c) In the case of a direct response issuer, a copy of the application or supplemental form:

(1) signed by the applicant; and

(2) acknowledged by the insurer;

shall be returned to the applicant by the insurer upon delivery of the policy.

(d) Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer or its agent, shall furnish the applicant, ~~prior to~~ **before** issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One (1) copy of the notice signed by the applicant and the agent, except where the coverage is sold

without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.

(e) The notice required by subsection (d) for an issuer shall be provided in substantially the following form in ~~no less~~ **not smaller** than 12-point type:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT INSURANCE **OR MEDICARE ADVANTAGE**

[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to terminate existing Medicare supplement **or Medicare Advantage** insurance and replace it with a policy to be issued by [Company Name] Insurance Company. Your new policy will provide thirty (30) days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision, you should terminate your present Medicare supplement **or Medicare Advantage** coverage. You should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY ISSUER, AGENT [BROKER OR OTHER REPRESENTATIVE]:

I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement coverage **or, if applicable, Medicare Advantage** because you intend to terminate your existing Medicare supplemental coverage **or leave your Medicare Advantage plan.** The replacement policy is being purchased for the following reasons (check one):

____ Additional benefits.
____ No change in benefits, but lower premiums.
____ Fewer benefits and lower premiums.
____ **My plan has outpatient prescription drug coverage and I am enrolling in Part D.**
____ **Disenrollment from a Medicare Advantage plan. Please explain the reason for disenrollment [optional only for Direct Mailers]**_____
_____
_____
____ Other (please specify).
_____
_____
_____

(1) State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods, or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) to the extent such time was spent (depleted) under the original policy.

(2) If you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded. (If the policy or certificate is guaranteed issue, this paragraph need not appear.)

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

(Signature of Agent, Broker or Other Representative)*

[Typed Name and Address of Issuer, Agent or Broker]

(Applicant's Signature)

(Date)

*Signature not required for direct response sales.

(f) Subsection (e)(1) and (e)(2) of the replacement notice (applicable to preexisting conditions) may be deleted by an issuer if the replacement does not involve application of a new preexisting condition limitation. *(Department of Insurance; 760 IAC 3-15-1; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2615; filed Jul 18, 1996, 1:00 p.m.: 19 IR 3464; errata filed Sep 24, 1996, 10:30 a.m.: 20 IR 332; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 17. 760 IAC 3-18-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-18-1 Appropriateness of recommended purchase and excessive insurance; reporting of multiple policies

Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1; IC 27-8-13-12
Affected: IC 27-8-13

Sec. 1. (a) In recommending the purchase or replacement of any Medicare supplement policy or certificate, an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

(b) Any sale of **a** Medicare supplement ~~coverage~~ **policy or certificate** that will provide an individual more than one (1) Medicare supplement policy or certificate is prohibited, except that an agent may sell a replacement policy or certificate in accordance with ~~760 IAC 3-1-15~~ **760 IAC 3-15-1** provided that the replacement policy or certificate is not made effective any sooner than is necessary to provide continuous benefits for preexisting conditions.

(c) An issuer shall not issue a Medicare supplement policy

or certificate to an individual enrolled in Medicare Part C unless the effective date of the coverage is after the termination date of the individual's Part C coverage.

~~(c)~~ **(d)** An insurer ~~which~~ **that** issues a Medicare supplement policy or certificate to any individual who has one (1) policy or certificate then in effect, except as permitted by subsection (b), shall, at the request of the insured, either:

(1) refund the premiums; or

(2) pay any claims on the policy or certificate;

whichever is greater.

~~(d)~~ **(e)** ~~On or~~ Before March ~~1~~ **2** of each year, an issuer shall report the following information for every individual resident of this state for which the issuer has in force more than one (1) Medicare supplement policy or certificate:

(1) **The** policy and certificate number.

(2) **The** date of issuance.

~~(e)~~ **(f)** The items set forth in subsection ~~(d)~~ **(e)** must be grouped by individual policyholder.

~~(f)~~ **(g)** The form for reporting the information required by subsection ~~(d)~~ **(e)** is as follows:

FORM FOR REPORTING
MEDICARE SUPPLEMENT MULTIPLE POLICIES

Company Name: _____

Address: _____

_____

Phone Number: _____

Due March 1, annually

The purpose of this form is to report the following information on each resident of this state who has in force more than one (1) Medicare supplement policy or certificate. The information is to be grouped by individual policyholder.

Policy and Certificate #	Date of Issuance

_____
Signature

_____
Name and Title (please type)

_____
Date

(Department of Insurance; 760 IAC 3-18-1; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2617; errata filed Sep 20, 1993, 5:00 p.m.: 17 IR 200; filed Feb 1, 1999, 10:45 a.m.: 22 IR 1987; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on May 26, 2005 at 10:00 a.m., at the Department of Insurance, 311 West Washington Street, Suite 300, Indianapolis, Indiana the Department of Insurance will hold a public hearing on proposed amendments to 760 IAC 3 regarding Medicare supplement policies to conform the rule to the revised model regulation adopted by the National Association of Insurance Commissioners in 2004. Copies are available on the Department of Insurance's Web site at www.state.in.us/idoi. Copies of these rules are now on file at the Department of Insurance, 311 West Washington Street, Suite 300 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Jim Atterholt
Commissioner
Department of Insurance

TITLE 760 DEPARTMENT OF INSURANCE

Proposed Rule
LSA Document #05-26

DIGEST

Adds 760 IAC 1-71 regarding the costs that can be charged for providing copies of medical records. Effective 30 days after filing with the secretary of state.

760 IAC 1-71

SECTION 1. 760 IAC 1-71 IS ADDED TO READ AS FOLLOWS:

Rule 71. Copies of Medical Records

760 IAC 1-71-1 Applicability and scope
Authority: IC 16-39-9-4
Affected: IC 16-39

Sec. 1. This rule applies to all providers and medical records companies. *(Department of Insurance; 760 IAC 1-71-1)*

760 IAC 1-71-2 Definitions
Authority: IC 16-39-9-4
Affected: IC 16-18-2-295; IC 16-39

Sec. 2. The following definitions apply throughout this rule:
(1) "Medical records company" means a company that contracts with providers to make copies of patient medical records.
(2) "Personal representative" means a person who:
(A) holds a health care power of attorney; or
(B) otherwise has the authority to make health care decisions;
on behalf of a patient.
(3) "Provider" has the meaning set forth in IC 16-18-2-295.
(Department of Insurance; 760 IAC 1-71-2)

760 IAC 1-71-3 General requirements
Authority: IC 27-15-13-2
Affected: IC 27-15-13

Sec. 3. (a) A provider or medical records company that receives a request from a patient or a patient's personal representative for a copy of a patient's medical record shall charge not more than the following:

(1) One dollar ($1) per page for the first ten (10) pages.

(2) Fifty cents ($0.50) per page for pages eleven (11) through fifty (50).

(3) Twenty-five cents ($0.25) per page for pages fifty-one (51) and higher.

(4) The actual costs of mailing the copy.

(b) A provider or medical records company that receives a request for a copy of a patient's medical record from a person other than a patient or the patient's personal representative shall charge no more than the following:

(1) The per page copying and mailing fees set forth in subsection (a).

(2) A labor fee in the amount of twenty dollars ($20).

The provider or the medical records company may collect an additional ten dollars ($10) if the request is for copies to be provided within two (2) working days. *(Department of Insurance; 760 IAC 1-71-3)*

760 IAC 1-71-4 Waiver of charges
Authority: IC 16-39-9-4
Affected: IC 16-39

Sec. 4. A provider or a medical records company shall consider waiving or reducing the charges for copies of a patient's medical record under the following situations:

(1) A request from a provider to whom the patient was referred for treatment or from whom the patient is seeking a second opinion.

(2) The patient requested the records for his or her own use, and the charges will cause an undue financial hardship upon the patient.

(Department of Insurance; 760 IAC 1-71-4)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on May 26, 2005 at 11:00 a.m., at the Department of Insurance, 311 West Washington Street, Suite 300, Indianapolis, Indiana the Department of Insurance will hold a public hearing on a proposed new rule regarding the costs that may be charged for copying medical records. Copies are available on the Department of Insurance's Web site at www.state.in.us/idoi. Copies of these rules are now on file at the Department of Insurance, 311 West Washington Street, Suite 300 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Jim Atterholt
Commissioner
Department of Insurance

Notices of Intent to Readopt

TITLE 305 INDIANA BOARD OF LICENSURE FOR PROFESSIONAL GEOLOGISTS

Notice of Intent
LSA Document #05-60

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

OVERVIEW: Rules to be readopted without changes are as follows:

305 IAC 1-2 Definitions

Questions or comments on the readoption may be directed to Amanda Wilson, Licensing Coordinator, Indiana Board of Licensure for Professional Geologists, at (812) 855-5067. Statutory authority: IC 25-17.6-3-12.

Proposed Readopted Rules

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

Proposed Rule
LSA Document #05-22

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

170 IAC 7-6

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

170 IAC 7-6 Disconnection of Alternative Local Exchange Carrier by Incumbent Local Exchange Carrier

Notice of Public Hearing

Under IC 4-22-2-24 and IC 4-22-2.5-4, notice is hereby given that on June 2, 2005 at 9:30 a.m., at the Indiana Government Center-South, 302 West Washington Street, Room E306, Indianapolis, Indiana the Indiana Utility Regulatory Commission will hold a public hearing to readopt rules.

Requests for any part of this readoption to be separate from this action must be made in writing within 30 days of this publication. Send written comments to:
Indiana Utility Regulatory Commission
Office of the General Counsel
Indiana Government Center-South
302 W. Washington Street, Room E306
Indianapolis, Indiana 46204.
Copies of these rules are now on file at the Indiana Utility Regulatory Commission, Indiana Government Center-South, 302 West Washington Street, Room E306 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

William D. McCarty
Commission Chairman
Indiana Utility Regulatory Commission

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

Proposed Rule
LSA Document #05-20

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

410 IAC 1-6	**410 IAC 15-2.4**
410 IAC 15-2.1	**410 IAC 15-2.5**
410 IAC 15-2.2	**410 IAC 15-2.6**
410 IAC 15-2.3	**410 IAC 15-2.7**

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

410 IAC 1-6 Offering of Human Immunodeficiency Virus Information and Counseling and Human Immunodeficiency Virus Testing
410 IAC 15-2.1 Definitions
410 IAC 15-2.2 Compliance
410 IAC 15-2.3 Licensure Requirements
410 IAC 15-2.4 Governing Body
410 IAC 15-2.5 Required Ambulatory Outpatient Surgical Center Services
410 IAC 15-2.6 Optional Ambulatory Surgical Center Services
410 IAC 15-2.7 Incorporation by Reference

Notice of Public Hearing

Under IC 4-22-2-24 and IC 4-22-2.5-4, notice is hereby given that on June 14, 2005 at 2:00 p.m., at the Indiana State

Department of Health, 2 North Meridian Street, Myers Conference Room, Indianapolis, Indiana the Indiana State Department of Health will hold a public hearing to readopt rules.

Requests for any part of this readoption to be separate from this action must be made in writing within 30 days of this publication. Send written comments to:

Indiana State Department of Health
Office of Legal Affairs
2 North Meridian Street
Indianapolis, Indiana 46204.

Copies of these rules are now on file at the Indiana State Department of Health, 2 North Meridian Street and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Sue Uhl
Deputy State Health Commissioner
Indiana State Department of Health

TITLE 511 INDIANA STATE BOARD OF EDUCATION

Proposed Rule
LSA Document #05-15

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

511 IAC 6-9.1

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

511 IAC 6-9.1 Waiver of Curriculum and Graduation Rules for Programs for High Ability Students

Notice of Public Hearing

Under IC 4-22-2-24 and IC 4-22-2.5-4, notice is hereby given that on June 2, 2005 at 9:00 a.m., at the Department of Education, 151 West Ohio Street, James Whitcomb Riley Conference Room, Indianapolis, Indiana the Indiana State Board of Education will hold a public hearing to readopt rules.

Requests for any part of this readoption to be separate from this action must be made in writing within 30 days of this publication. Send written comments to:

Mr. Jeffery P. Zaring
State Board Administrator
Indiana Department of Education
229 State House
Indianapolis, Indiana 46204.

Copies of these rules are now on file at 229 State House and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Suellen Reed
Superintendent of Public Instruction
Indiana State Board of Education

TITLE 840 INDIANA STATE BOARD OF HEALTH FACILITY ADMINISTRATORS

Proposed Rule
LSA Document #05-12

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

840 IAC 2-1

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

840 IAC 2-1 Standards of Competent Practice

Notice of Public Hearing

Under IC 4-22-2-24 and IC 4-22-2.5-4, notice is hereby given that on June 2, 2005 at 10:15 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Indiana State Board of Health Facility Administrators will hold a public hearing to readopt rules.

Requests for any part of this readoption to be separate from this action must be made in writing within 30 days of this publication. Send written comments to:

Tonja Thompson
Health Professions Bureau
402 West Washington Street, Room W066
Indianapolis, IN 46204
or via e-mail to tthompson@hpb.state.in.us.

Copies of these rules are now on file at the Health Professions Bureau, Indiana Government Center-South, 402 West Washington Street, Room W066 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Frances L. Kelly
Executive Director
Health Professions Bureau

TITLE 898 INDIANA ATHLETIC TRAINERS BOARD

Proposed Rule
LSA Document #05-13

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

898 IAC 1-1-2.4
898 IAC 1-1-4.5
898 IAC 1-1-10

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

898 IAC 1-1-2.4	"A.T.C./L." defined
898 IAC 1-1-4.5	"L.A.T." defined
898 IAC 1-1-10	"Traditional athletic training setting" defined

Notice of Public Hearing

Under IC 4-22-2-24 and IC 4-22-2.5-4, notice is hereby given that on July 19, 2005 at 11:05 a.m., at the Health Professions Bureau, Indiana Government Center-South, 402 West Washington Street, Conference Center Room W064, Indianapolis, Indiana the Indiana Athletic Trainers Board will hold a public hearing to readopt rules.

Requests for any part of this readoption to be separate from this action must be made in writing within 30 days of this publication. Send written comments to:

Valerie Jones
Health Professions Bureau
402 West Washington Street, Room W066
Indianapolis, IN 46204
or via e-mail to vjones@hpb.state.in.us.

Copies of these rules are now on file at the Health Professions Bureau, Indiana Government Center-South, 402 West Washington Street, Room W066 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Frances L. Kelly
Executive Director
Health Professions Bureau

60 Day Requirement (IC 4-22-2-19)

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

LSA Document #04-75

To: Senator R. Michael Young, Chairperson
C/o Indiana Legislative Services Agency
200 W. Washington St.
Suite 301
Indianapolis, IN 46204-2789

From: Kevin Wild, Staff Attorney

Re: LSA #04-75

Date: March 23, 2005

Cc: Steve Barnes, Indiana Register
John Davis, General Counsel, FSSA

On behalf of the Family and Social Services Administration, Division of Disability and Rehabilitative Services, I am submitting this memo to the Administrative Rules Oversight Committee because this filing of the above-captioned rule will not comply with 4-22-2-19(c)(1).

Promulgation of this rule was required when a similar rule which it replaces was invalidated in part by a decision of the Indiana Court of Appeals in 2003. The rule was rewritten so that its provisions fully comply with the Court's decision. There was no corresponding change or addition to the statutory authority. The impetus for promulgation of this rule was outside its statutory authority, that is: the Court decision. The rule promulgation could therefore not be started within sixty days of the effective date of the enabling statutes.

Please feel free to contact me at 233-2582 if you have any further questions about this rule or this notice.

365 Day Notice (IC 4-22-2-25)

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

LSA Document #04-196

March 22, 2005

The Honorable R. Michael Young, Chair
Administrative Rules Oversight Committee
C/O Indiana Legislative Services Agency
200 West Washington Street
Suite 301
Indianapolis, Indiana 46204-2789
Attention Sarah Burkman

Subject: LSA Document #04-196

Dear Senator Young:

On behalf of the Fire Prevention and Building Safety Commission ("Commission"), I am submitting this notice to the Administrative Rules Oversight Committee in compliance with IC 4-22-2-25, because the agency has determined that the promulgation of the captioned rule may not be completed within one year after publication of the notice of intent to adopt a rule.

The Commission published its notice of intent to adopt a rule for the captioned document on August 1, 2004 (27 IR 3594). The rule was published as a Proposed Rule on December 1, 2004 (28 IR 1029). A Notice of Public Hearing was also published on December 1, 2004 (28 IR 1037). A Change in Notice of Public Hearing was published on February 1, 2005 (28 IR 1498). The first public hearing was held on March 1, 2005 and the second public hearing is scheduled to be held on May 4, 2005.

Due to the changes proposed to the Commission by Senate Bill 56, it is possible that the Commission will not be able to hold a meeting to adopt this rule until July 2005.

The Commission is expected to adopt the rule on or before July 6, 2005.

It is expected that the rule can be approved by the Governor by September 30, 2005.

The two hundred and fiftieth day after publication of the notice of intent to adopt a rule is April 7, 2005.

Sincerely,

John R. Weesner, Director, Technical Services
Department of Fire and Building Services

TITLE 326 AIR POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD
#05-77(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING ATTAINMENT STATUS DESIGNATIONS FOR THE FINE PARTICLES ($PM_{2.5}$) NATIONAL AMBIENT AIR QUALITY STANDARD

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to 326 IAC 1-4-1, concerning attainment status designations for the fine particulate National Ambient Air Quality Standard ($PM_{2.5}$ standard). IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: 326 IAC 1-4-1; 326 IAC 2.

AUTHORITY: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

Under the Clean Air Act, U.S. EPA is responsible for: (1) establishing ambient air quality standards to protect the public health and welfare; (2) determining which areas of the country have air quality that does not meet those standards; and (3) overseeing states' efforts to develop and implement plans to improve air quality in those areas. The Clean Air Act establishes basic requirements and procedures for the clean air planning process, but U.S. EPA issues more specific guidance to help states, citizens, businesses and local governments comply with the Clean Air Act's requirements. U.S. EPA also promulgates rules to meet the Clean Air Act requirements. In this case, U.S. EPA is promulgating a rule designating certain counties, entirely or in part, as nonattainment for the $PM_{2.5}$ standard.

On June 29, 2004, U.S. EPA made a preliminary determination, based on input from IDEM, that certain Indiana counties should be designated as nonattainment for the $PM_{2.5}$ standard. IDEM presented additional information to U.S. EPA on June 1, 2004, November 19, 2004, and December 6, 2004. U.S. EPA issued the final designations on January 5, 2005 (70 FR 944).

From U.S. EPA's final determination, the following nineteen (19) counties, entirely or in part, were designated as nonattainment of the $PM_{2.5}$ standard on January 5, 2005: Clark, Dearborn (Lawrenceburg Township), Dubois, Elkhart, Floyd, Gibson (Montgomery Township), Hamilton, Hendricks, Jefferson (Madison Township), Johnson, Lake, Marion, Morgan, Pike (Washington Township), Porter, St. Joseph, Spencer (Ohio Township), Vanderburgh, and Warrick. Delaware County was designated unclassifiable for the $PM_{2.5}$ standard. U.S. EPA considered a request by IDEM to reclassify some of these counties to attainment before the April 5 effective date of the federal rule because some counties were able to meet the standard as of the end of 2004. On April 5, 2005, U.S. EPA announced that two (2) Indiana counties, Elkhart and St. Joseph, should be designated in attainment based on monitoring data, leaving seventeen (17) counties designated in nonattainment. Delaware County, which had been designated unclassifiable, was also determined to be in attainment.

On March 7, 2005, the State of Indiana filed a petition in the U.S. Court of Appeals contending that U.S. EPA's classification of certain areas of Indiana as nonattainment for the $PM_{2.5}$ NAAQS is "arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law...." (State of Indiana v. EPA, U.S. Court of Appeals for the District of Columbia, Case No. 05-1077). Indiana requested that the court reverse the January 5, 2005, final rule concerning air quality designations for the $PM_{2.5}$ standard and remand the rule to U.S. EPA for modification or amendment.

In order to apply the state nonattainment rules to nonattainment counties, Indiana must adopt the federal designations. However, because Indiana anticipates that U.S. EPA will change the designation of some of these counties to attainment, IDEM is proposing a rule to only designate to nonattainment three counties that have had monitored violations of the $PM_{2.5}$ standard. These counties are Clark, Dubois, and Marion. IDEM may also need to revise permitting rules in 326 IAC 2 to clarify the applicability of permitting requirements in the newly designated counties. Additional counties may be added to this rulemaking based on the results of U.S. EPA's consideration of the 2004 air quality data and the petition filed by IDEM.

Proper designation of the counties determined to be nonattainment for the $PM_{2.5}$ standard will provide the basis in state law for IDEM to develop attainment plans for the newly designated counties. It will also ensure that air permits in these counties are issued under the correct permitting rules. If Indiana does not adopt the federal $PM_{2.5}$ designations, it is possible that U.S. EPA would have to issue new source review permits for certain types of projects in the affected areas. Stricter permitting rules will apply in nonattainment counties for new and expanding sources, however, these permitting rules only apply to certain larger sources.

U.S. EPA has not yet issued the $PM_{2.5}$ Implementation Rule that will include changes to the New Source Review program. The proposed rule is expected by December 2005, and the final rule sometime in 2006. U.S. EPA has indicated that it will develop a guidance memo to address the time period from the effective date of the designations, April 5, 2005, to the effective date of the final $PM_{2.5}$ Implementation Rule. IDEM will work with sources seeking permits in nonattainment areas and U.S. EPA to ensure sources receive the proper permits in the interim.

Alternatives To Be Considered Within the Rulemaking

Alternative 1. Incorporation by reference of the $PM_{2.5}$ designations published on January 5, 2005 (70 FR 944).

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Alternative 2. Designate only the Indiana counties with monitored violations of the $PM_{2.5}$ standard.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.
- Is this alternative imposed by federal law or is there a comparable federal law? Federal law designates seventeen (17) counties in Indiana as nonattainment for the PM2.5 standard. This alternative would only designate as nonattainment three (3) of the seventeen (17) counties based on monitored violations. These counties are Clark, Dubois, and Marion.
- If it is a federal requirement, is it different from federal law? Yes.
- If it is different, describe the differences. This rule would only designate to nonattainment three (3) of the seventeen (17) counties identified in the federal rule.

Alternative 3. No rulemaking.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.

- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? N/A
- If it is different, describe the differences. N/A

Applicable Federal Law

40 CFR 50 (National Primary and Secondary Ambient Air Quality Standards) and 40 CFR 81 (Designation of Areas for Air Quality Planning Purposes) are both applicable federal laws impacting this rulemaking. 40 CFR 50 (amended on July 18, 1997 (62 FR 38652)) contains the standards for $PM_{2.5}$. 40 CFR 81 (amended on January 5, 2005 (70 FR 944)) lists the areas of the United States, specific to each state that U.S. EPA determines as not attaining the standards (nonattainment) for $PM_{2.5}$. 40 CFR 81 will also be amended with U.S. EPA's April 5, 2005 designations that are yet to be published in the Federal Register.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. There is no fiscal impact imposed as a result of this state rule that is not currently imposed by the federal standard. Any fiscal impact was addressed during the federal rulemaking process. The rule may impact economic development in the counties designated nonattainment of the $PM_{2.5}$ standard, but that impact would be difficult to quantify.

Potential Fiscal Impact of Alternative 2. There is no fiscal impact imposed as a result of this state rule that is not currently imposed by the federal standard. Any fiscal impact was addressed during the federal rulemaking process. The rule may impact economic development in the three counties designated nonattainment of the $PM_{2.5}$ standard in this alternative, but that impact would be difficult to quantify.

Potential Fiscal Impact of Alternative 3. No fiscal impact.

Public Participation and Workgroup Information

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Christine Pedersen, Rules Section, Office of Air Quality at (317) 233-6868 or (800) 451-6027 (in Indiana).

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

(1) All existing physical conditions and the character of the area affected.

(2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.

(3) Zoning classifications.

(4) The nature of the existing air quality or existing water quality, as the case may be.

(5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.

(6) Economic reasonableness of measuring or reducing any particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

(1) The submission of alternative ways to achieve the purpose of the rule.

(2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#05-77(APCB) $PM_{2.5}$ Designations
Christine Pedersen Mail Code 61-50
c/o Administrative Assistant
Rules Development Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the tenth floor reception desk, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by June 1, 2005.

Additional information regarding this action may be obtained from Christine Pedersen, Rules Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).

Kathryn A. Watson, Chief
Air Programs Branch
Office of Air Quality

TITLE 326 AIR POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD
#05-78(APCB)

DEVELOPMENT OF AMENDMENTS TO 326 IAC 2-6 CONCERNING EMISSION REPORTING

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rule 326 IAC 2-6 to add particulate matter less than or equal to 2.5 micrometers ($PM_{2.5}$) and ammonia (NH_3) to the list of pollutants to be reported on the emission statement, add LaPorte County to the list of counties at 326 IAC 2-6-1(a)(2) subject to the emission statement requirements in Section 182(a)(3)(b) of the Clean Air Act, and any clarification that might be needed in 326 IAC 2-6. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: 326 IAC 2-6.

AUTHORITY: IC 13-14-8; IC 13-17-3-4.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

The emission reporting rule, 326 IAC 2-6, was originally adopted by the Air Pollution Control Board (APCB) and became effective in 1993. The emission reporting rule is part of Indiana's state implementation plan (SIP) and addresses emission statement requirements found in Section 182(a)(3)(b) of the Clean Air Act. 326 IAC 2-6 requires air emission sources over specified emission thresholds to report their

actual emissions of certain pollutants to IDEM in an emission statement. Emissions information reported through this program is used for air quality planning, tracking progress, and for billing purposes.

On December 3, 2003, the APCB adopted amendments to this rule consistent with many of the provisions in the federal consolidated emission reporting rule (CERR) (68 FR 39602) published by U.S. EPA on June 10, 2002, while maintaining consistency with the emission statement requirements in Section 182(a)(3)(b) of the Clean Air Act (CAA). These amendments included changing applicability, adding reporting parameters, and reducing the reporting schedule from annual to triennial reporting for many sources to be consistent with the CERR. The emission reporting rule, 326 IAC 2-6, was also amended to provide the department with the authority to request hazardous air pollutant (HAP) emissions from permitted sources as needed to investigate areas of concern or support air quality planning.

This rulemaking will propose changes based on federal requirements that were not included in the 2003 amendments. First, IDEM proposes to add particulate matter less than or equal to 2.5 micrometers ($PM_{2.5}$) and ammonia (NH_3) to the list of pollutants to be reported on the emission statement since states are required by the CERR to report this information to U.S. EPA. Adjacent states in Region V already require reporting of $PM_{2.5}$ and NH_3. Second, IDEM is proposing to amend the rule to apply the reporting thresholds for nonattainment areas to the new 8-hour ozone nonattainment areas. This means a change only for LaPorte County, a marginal area under the 8-hour ozone standard. LaPorte County is required by Section 182(a)(3)(b) of the Clean Air Act to have a twenty-five (25) tons per year (tpy) reporting threshold for volatile organic compounds (VOC) and nitrogen oxides (NO_x) as currently applies in Lake and Porter Counties. All other counties will retain the one hundred (100) tpy reporting threshold consistent with the CERR. The department also requests comments on other clarifications that may be needed for the emission reporting rule.

Alternatives To Be Considered Within the Rulemaking

Alternative 1. Amend rule to include $PM_{2.5}$ and NH_3 and amend list of counties subject to reduced applicability threshold for NO_x and VOC.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Alternative 2. Take no action to make the changes to the state rules. Although this is an alternative the department has to consider it is not a viable option because the department would not be able to change the reporting thresholds for LaPorte County without rulemaking. Also, the department would have to continue estimating emissions of $PM_{2.5}$ and NH_3 for sources subject to this rule. The sources would be able to provide more accurate emissions estimates for developing emissions inventories to be submitted to the U.S. EPA.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Not applicable.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

The proposed amendments to 326 IAC 2-6 are consistent with the federal CERR, 67 FR 39611, and Section 182(a)(3)(b) of the Clean Air Act.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. There are two categories of sources affected by this rulemaking. Most affected sources are already required to submit an emission statement. The cost to report additional $PM_{2.5}$ and NH_3 pollutants is unknown and the department invites comments on the cost. Sources will be able to use available U.S. EPA methodologies and emission factors to estimate emissions. The department will assist these sources with compliance and provide guidance to reduce the reporting burden. The department will also assist those sources newly subject to the rule because of the lower reporting threshold in LaPorte County. The number of sources affected by this change is unknown, but should be a small number of sources based on IDEM's review of the number of sources in adjacent Porter County with emissions greater than twenty-five (25) tpy but less than one hundred (100) tpy. There are only three (3) compared to six (6) sources with emissions greater than one hundred (100) tpy for VOC or NO_x.

Potential Fiscal Impact of Alternative 2. There would be no fiscal impact based on Alternative 2.

Public Participation and Workgroup Information

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Susan Bem, Rules Section, Office of Air Quality at (317) 233-5697 or (800) 451-6027 (in Indiana).

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

(1) All existing physical conditions and the character of the area affected.

(2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.

(3) Zoning classifications.

(4) The nature of the existing air quality or existing water quality, as the case may be.

(5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.

(6) Economic reasonableness of measuring or reducing any particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

(1) The submission of alternative ways to achieve the purpose of the rule.

(2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:
#05-78(APCB) Emission Reporting/CERR
Susan Bem Mail Code 61-50
c/o Administrative Assistant
Rules Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the tenth floor reception desk, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number:

(317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by June 1, 2005.

Additional information regarding this action may be obtained from Susan Bem, Rules Section, Office of Air Quality, (317) 233-5697 or (800) 451-6027 (in Indiana).

Kathryn A. Watson, Chief
Air Programs Branch
Office of Air Quality

TITLE 326 AIR POLLUTION CONTROL BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-8 AND DRAFT RULE
#05-79(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING INCORPORATION BY REFERENCE OF DELISTED HAZARDOUS AIR POLLUTANTS AND COMPOUNDS EXCLUDED AS VOLATILE ORGANIC COMPOUNDS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 326 IAC 1-2-33.5, 326 IAC 1-2-48, and 326 IAC 1-2-90 for the purpose of incorporating by reference federal exclusions of volatile organic compounds (VOCs) and federally delisted hazardous air pollutants (HAPs) from their current corresponding definitions. IDEM has scheduled a public hearing before the air pollution control board (APCB) for consideration of preliminary adoption of these rules.

CITATIONS AFFECTED: 326 IAC 1-2-33.5; 326 IAC 1-2-48; 326 IAC 1-2-90.

AUTHORITY: IC 13-14-8; IC 13-17-3-4; IC 13-14-9-8.

STATUTORY REQUIREMENTS

IC 13-14-9-8 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that there is no anticipated benefit from the first and second public comment periods, IDEM may forego these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for preliminary adoption. Two (2) opportunities for public comment (at the public hearings prior to preliminary and final adoption of the rule) remain under this procedure.

If the commissioner makes the determination of no anticipated benefit required by IC 13-14-9-8, the commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for preliminary adoption, and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-8.

The statute provides for this shortened rulemaking process if the commissioner determines that:

(1) the rule constitutes:
  (A) an adoption or incorporation by reference of a federal law, regulation, or rule that:
    (i) is or will be applicable to Indiana; and
    (ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;
  (B) a technical amendment with no substantive effect on an existing Indiana rule; or
  (C) a substantive amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and

(2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in IC 13-14-9-7(a)(2) from:
  (A) exposing the rule to diverse public comment under section IC 13-14-9-3 or IC 13-14-9-4;
  (B) affording interested or affected parties the opportunity to be heard under IC 13-14-9-3 or IC 13-14-9-4; and
  (C) affording interested or affected parties the opportunity to develop evidence in the record collected under IC 13-14-9-3 and IC 13-14-9-4.

BACKGROUND

On November 29, 2004, United States Environmental Protection Agency (U.S. EPA) determined that five (5) VOCs and one (1) HAP have adequate data justifying that excluding the VOCs in whole or part and delisting the HAP from their corresponding definitions for regulatory purposes will not result in adverse human health or environmental effects under reasonable conditions.

U.S. EPA defines VOCs for purposes of federal regulations related to attaining the National Ambient Air Quality Standards (NAAQS) for ozone. VOC are defined to include volatile compounds of carbon with the exemption of compounds that have negligible reactivity for the formation of ozone. Negligibly reactive compounds are those compounds that, based on scientific studies, are found not to contribute appreciably to ozone formation. Recently, U.S. EPA (69 FR 69290) delisted four (4) VOCs completely: 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n- $C_3F_7OCH_3$) (known as HFE-7000); 3- ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (known as HFE-7500, HFE-s702, T-7145, and L-15381); 1,1,1,2,3,3,3-heptafluoropropane (known as HFC 227ea); and methyl formate ($HCOOCH_3$). These VOCs are considered to be negligibly reactive by U.S. EPA.

A fifth VOC, t-butyl acetate (also known as tertiary butyl acetate or informally as TBAc or TBAC) will not be treated as a VOC for purposes of emissions limitations or content requirements, but will continue to be a VOC for purposes of all recordkeeping, emissions reporting, and inventory requirements that apply to VOC.

U.S. EPA's current VOC exemption policy is to avoid placing an undue regulatory burden on the use of compounds that do not significantly contribute to the formation of harmful concentrations of ozone. Once a compound is exempted, emissions of the compound may increase significantly due to substitution and new uses of the compound. Because these potential increases are exempt from control, it is important that the compounds be negligibly reactive and not simply marginally less reactive than compounds that they may replace. If by exempting negligibly reactive compounds, U.S. EPA encourages the substitution of such compounds for highly reactive compounds, this is an added environmental benefit.

U.S. EPA (69 FR 69320) also amended the list of HAPs contained in Section 112(b)(1) of the Clean Air Act (CAA) to remove the compound ethylene glycol monobutyl ether (EGBE or 2-

Butoxyethananol) from the group of glycol ethers. U.S. EPA determined that there was adequate data to support delisting the EGBE.

By incorporating these federal regulations that exclude and delist the above mentioned chemicals, this rulemaking helps to ensure that state rules are consistent with federal regulations. The draft rule has also been updated to directly incorporate by reference the corresponding federal citations and existing rule language that had paraphrased previous federal language is being removed.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law.

FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking on the incorporation of federal regulations that excludes or delist five (5) VOCs and one (1) HAP from state current definitions. These findings are prepared under IC 13-14-9-8 and are as follows:

(1) The draft rule is the direct incorporation by reference of federal regulations that are applicable to Indiana and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.

(2) The public will benefit from prompt adoption of this rule, because companies are interested in using the excluded or delisted chemicals to substitute for chemicals more hazardous to the environment as soon as possible.

(3) I have determined that under the specific circumstances pertaining to this rule, there would be no benefit to the environment or to persons to be regulated or otherwise affected by this rule from the first and second public comment periods.

(4) The draft rule is hereby incorporated into these findings.

Thomas W. Easterly
Commissioner
Indiana Department of Environmental Management

ADDITIONAL INFORMATION

Additional information regarding this action may be obtained from Gayl Killough, Rules Section, Office of Air Quality (317) 233-8628 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 1-2-33.5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-2-33.5 "Hazardous air pollutant" or "HAP" defined
Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 33.5. "Hazardous air pollutant" **or "HAP"** means any air pollutant listed pursuant to Section 112(b) of the Clean Air Act **and not delisted from that list or redefined under 40 CFR Part 63, Subpart C, as amended at 69 FR 69325, November 29, 2004*.**

***This document is incorporated by reference. Copies referenced in this section may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 1-2-33.5; filed May 25, 1994, 11:00 a.m.: 17 IR 2238)*

SECTION 2. 326 IAC 1-2-48 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-2-48 "Nonphotochemically reactive hydrocarbons" or "negligibly photochemically reactive compounds" defined
Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 48. (a) "Nonphotochemically reactive hydrocarbons" or "negligibly photochemically reactive compounds" refers to the list of organic compounds that have been determined to have negligible photochemical reactivity and are thereby excluded from the definition of volatile organic compounds (VOC) ~~in~~ **as follows:**

(1) 40 CFR 51.100(s)(1)*, ~~The air pollution control board incorporates by reference 40 CFR 51.100(s)(1)*.~~ **as amended at 69 FR 69298, November 29, 2004***.

(2) 40 CFR 51.100(s)(5)*, as added at 69 FR 69304, November 29, 2004*.

(3) 40 CFR 51.100(s)(2)*, as measured by 326 IAC 8-1-4 and approved by the commissioner; subject to conditions under 40 CFR 51.100(s)(3) through 40 CFR 51.100(s)(4)*.

(b) Compliance calculations for coatings expressed as pounds VOC/gallon coating (less water) should treat nonphotochemically reactive compounds or negligibly photochemically reactive compounds as water for purposes of calculating the less water portion of the coating composition.

~~*This document is~~ ***These documents are** incorporated by reference. Copies referenced in this section may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 1-2-48; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2373; filed Sep 23, 1988, 11:59 a.m.: 12 IR 255; filed Jan 16, 1990, 4:00 p.m.: 13 IR 1016; filed Aug 9, 1993, 5:00 p.m.: 16 IR 2827; filed Sep 5, 1995, 12:00 p.m.: 19 IR 29; filed May 13, 1996, 5:00 p.m.: 19 IR 2855; errata filed Mar 21, 1997, 9:50 a.m.: 20 IR 2116; filed Jun 9, 2000, 10:01 a.m.: 23 IR 2704; filed May 21, 2002, 10:20 a.m.: 25 IR 3055)*

SECTION 3. 326 IAC 1-2-90, AS AMENDED AT 28 IR 18, SECTION 4, IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-2-90 "Volatile organic compound" or "VOC" defined
Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 90. ~~(a)~~ "Volatile organic compound" or "VOC" ~~means any compound of carbon excluding the following:~~ **has the meaning set forth in 40 CFR 51.100(s)* as amended at 69 FR 69298, November 29, 2004* and 69 FR 69304, November 29, 2004*.**

~~(1) Carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.~~

~~(2) Any organic compound which has been determined to have negligible photochemical reactivity listed in section 48 of this rule. VOC content shall be measured in accordance with 326 IAC 8-1-4.~~

~~(b) For purposes of determining compliance with emission limits,~~

~~volatile organic compounds will be measured by the test methods in this title or 40 CFR 60, Appendix A*, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as volatile organic compounds if the amount of such compounds is accurately quantified and such exclusion is approved by the commissioner.~~

~~(c) As a precondition to excluding these compounds as volatile organic compounds or at any time thereafter, the commissioner may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the commissioner, the amount of negligibly-reactive compounds in the source's emissions.~~

~~(d) For purposes of federal enforcement for a specific source, the U.S. EPA shall use the test methods specified in Indiana's approved state implementation plan, in a permit issued pursuant to a program approved or promulgated under:~~

~~(1) Title V of the Clean Air Act;~~
~~(2) 40 CFR 51, Subpart I*;~~
~~(3) 40 CFR 51, Appendix S*;~~
~~(4) 40 CFR 52*; or~~
~~(5) 40 CFR 60*.~~

~~The U.S. EPA shall not be bound by any state determination as to appropriate methods for testing or monitoring negligibly-reactive compounds if such determination is not reflected in any of the provisions listed in this subsection.~~

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 1-2-90; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2377; filed Sep 23, 1988, 11:59 a.m.: 12 IR 256; filed May 9, 1990, 5:00 p.m.: 13 IR 1847; filed Aug 9, 1993, 5:00 p.m.: 16 IR 2828; filed Sep 5, 1995, 12:00 p.m.: 19 IR 30; filed Aug 26, 2004, 11:30 a.m.: 28 IR 18)*

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-1, IC 13-14-8-2, and IC 13-14-9, notice is hereby given that on June 1, 2005, at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on amendments to 326 IAC 1-2-33.5, 326 IAC 1-2-48, and 326 IAC 1-2-90.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Gayl Killough, Rules Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act Coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204

or call (317) 233-0855 or (317) 233-6565 (TDD). Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana and are open for public inspection.

TITLE 326 AIR POLLUTION CONTROL BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-8 AND DRAFT RULE
#05-80(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING INCORPORATION BY REFERENCE OF TRANSPORTATION CONFORMITY RULE AMENDMENTS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language to incorporate by reference 69 FR 40072 at 326 IAC 19-2-1 for the purpose of updating the transportation conformity rules and has scheduled a public hearing/meeting before the air pollution control board (board) for consideration of preliminary adoption of these rules.

CITATIONS AFFECTED: 326 IAC 19-2-1.

AUTHORITY: IC 13-14-8; IC 13-14-9; IC 13-17-3-4; IC 13-17-3-11.

STATUTORY REQUIREMENTS

IC 13-14-9-8 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that there is no anticipated benefit from the first and second public comment periods, IDEM may forego these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for preliminary adoption. Two (2) opportunities for public comment (at the public hearings prior to preliminary and final adoption of the rule) remain under this procedure.

If the Commissioner makes the determination of no anticipated benefit required by IC 13-14-9-8, the Commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for preliminary adoption, and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-8.

The statute provides for this shortened rulemaking process if the commissioner determines that:

(1) the rule constitutes:
  (A) an adoption or incorporation by reference of a federal law, regulation, or rule that:
    (i) is or will be applicable to Indiana; and
    (ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;
  (B) a technical amendment with no substantive effect on an existing Indiana rule; or

(C) a substantive amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and

(2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in IC 13-14-9-7(a)(2) from:

(A) exposing the rule to diverse public comment under section IC 13-14-9-3 or IC 13-14-9-4;

(B) affording interested or affected parties the opportunity to be heard under IC 13-14-9-3 or IC 13-14-9-4; and

(C) affording interested or affected parties the opportunity to develop evidence in the record collected under IC 13-14-9-3 and IC 13-14-9-4.

BACKGROUND

Transportation conformity is required under Clean Air Act Section 176(c) to ensure that federally supported highway and transit project activities are consistent with or "conform to" state implementation plans (SIP) for air quality. Conformity currently applies under the U.S. Environmental Protection Agency's (U.S. EPA) rules to areas that are designated nonattainment, and those redesignated to attainment after 1990 for the following criteria pollutants: ozone, particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}), carbon monoxide (CO), nitrogen dioxide (NO_2) and sulfur dioxide (SO_2). Conformity for the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards (NAAQS). U.S. EPA's transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the SIP.

U.S. EPA first promulgated the transportation conformity rule on November 24, 1993 (58 FR 62188), and subsequently published a comprehensive set of amendments on August 15, 1997 (62 FR 43780), that clarified and streamlined language from the 1993 rule. The 1997 rules allowed local officials to approve transportation projects without a currently conforming transportation plan and SIP if the project was part of a plan and transportation program that had previously conformed but had lapsed. On March 2, 1999, the U.S. Court of Appeals for the District of Columbia Circuit ruled that this so-called grandfathering of transportation projects violated provisions of the Clean Air Act. U.S. EPA has made amendments to the 1997 rules reflecting the court's decision and other issues. These amendments include a proposal published on June 30, 2003 (68 FR 38974), which addresses the court decision and a proposal published on November 5, 2003 (68 FR 62690), which addresses 8-hour ozone and $PM_{2.5}$ NAAQS. These proposals were published as amendments to the transportation conformity rule on July 1, 2004 (69 FR 40072).

This rulemaking will incorporate by reference the transportation conformity amendments published on July 1, 2004. The proposed amendments to 326 IAC 19-2-1(c)(1) are technical and non substantive. The proposed amendments to 326 IAC 19-2-1(c)(2) incorporate the U.S. EPA and the U.S. Department of Transportation (U.S. DOT) guidance that has been used in place of certain regulatory provisions of the rule. The amendments include criteria and procedures for the new 8-hour ozone and $PM_{2.5}$ NAAQS and apply the conformity rule provisions to $PM_{2.5}$ nonattainment areas. The amendments also address the 1999 court decision. This rulemaking will also eliminate an exemption that was included in state rules; thereby ensuring that Indiana's transportation conformity rule is identical to the federal transportation conformity rule.

Incorporation of the transportation conformity amendments is necessary so that Indiana's federally supported highway and transit project activities are consistent with the SIP. The transportation conformity amendments will ensure that conformity is practicably implemented for the new and current air quality standards in a manner consistent with the Clean Air Act's public health and environmental goals. The federal transportation conformity amendments became effective on August 2, 2004.

IDENTIFICATION OF RESTRICTIONS AND REQUIREMENTS NOT IMPOSED UNDER FEDERAL LAW

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law because it is a direct adoption of federal requirements that are applicable to Indiana and contains no amendments that have a substantive effect on the scope or application of the federal rule.

POTENTIAL FISCAL IMPACT

The transportation conformity amendment is a federal rule applicable to local and state planning entities. Costs to implement the rule are a result of the federal rule and not this rulemaking.

FINDINGS

The commissioner of IDEM has prepared findings regarding this rulemaking on incorporation by reference of transportation conformity amendments as required by federal rule. These findings are prepared under IC 13-14-9-8 and are as follows:

(1) This rule is the direct adoption of federal requirements that are applicable to Indiana and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.

(2) Indiana is required by federal law to incorporate transportation conformity requirements as part of its transportation conformity SIP.

(3) The public will benefit from prompt adoption of this rule, because the state will be able to legally enforce criteria and procedures for determining if transportation activities conform to the new 8-hour ozone and $PM_{2.5}$ NAAQS.

(4) I have determined that under the specific circumstances pertaining to this rule, there would be no benefit to the environment or to persons to be regulated or otherwise affected by this rule from the first and second public comment periods.

(5) The draft rule is hereby incorporated into these findings.

Thomas W. Easterly
Commissioner
Indiana Department of Environmental Management

ADDITIONAL INFORMATION

Additional information regarding this action may be obtained from Sky Schelle, Rule Development Section, Office of Air Quality (317) 234-3533 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 19-2-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 19-2-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule, unless specifically exempted in the applicability section of 40 CFR 93, Subpart A*, applies to transportation plans,

programs, and projects in nonattainment or maintenance areas for transportation-related criteria pollutants that are developed, funded, or approved by the United States Department of Transportation (DOT) and by metropolitan planning organizations (MPOs) or other recipients of funds under Title 23 United States Code (U.S.C.) or the Federal Transit Laws.

(b) This rule applies to regionally significant projects, regardless of funding source, located in nonattainment or maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

(c) The air pollution control board incorporates by reference the following:

(1) 40 CFR 51, Subpart T*. ~~"Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved under Title 23 U.S.C. or the Federal Transit Laws"*.~~

(2) 40 CFR 93, Subpart A*, ~~"Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved under Title 23 U.S.C. or the Federal Transit Laws"*, with the exception of Section 93.102(d)*.~~ **as amended by 69 FR 40072, July 1, 2004*.**

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are also available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 19-2-1; filed Apr 28, 1997, 4:00 p.m.: 20 IR 2298; filed Oct 20, 1998, 4:45 p.m.: 22 IR 751; filed May 21, 2002, 10:20 a.m.: 25 IR 3085)*

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-1, IC 13-14-8-2, and IC 13-14-9, notice is hereby given that on June 1, 2005, at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana, the Air Pollution Control Board will hold a public hearing on new amendments to 326 IAC 19-2-1.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Sky Schelle, Rule Development Section, Office of Air Quality, (317) 234-3533 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204

or call (317) 233-0855) or (317) 233-6565 (TDD). Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

TITLE 327 WATER POLLUTION CONTROL BOARD

IC 13-14-9.5 NOTICE OF READOPTION
#05-24(F)

READOPTION OF RULES IN TITLE 327 UNDER IC 13-14-9.5

PURPOSE OF NOTICE

Pursuant to IC 13-14-9.5-4(c), the Indiana Department of Environmental Management (IDEM) is publishing a notice of readoption of rules in Title 327 of the Indiana Administrative Code. With this notice, IDEM is providing notification that the following rules are readopted.

READOPTED RULES: 327 IAC 3-2-2; 327 IAC 3-2-2.5; 327 IAC 3-2-4; 327 IAC 3-2-6; 327 IAC 3-6-1; 327 IAC 3-6-2; 327 IAC 3-6-3; 327 IAC 3-6-4; 327 IAC 3-6-5; 327 IAC 3-6-6; 327 IAC 3-6-7; 327 IAC 3-6-8; 327 IAC 3-6-9; 327 IAC 3-6-10; 327 IAC 3-6-11; 327 IAC 3-6-12; 327 IAC 3-6-13; 327 IAC 3-6-14; 327 IAC 3-6-15; 327 IAC 3-6-16; 327 IAC 3-6-17; 327 IAC 3-6-18; 327 IAC 3-6-19; 327 IAC 3-6-20; 327 IAC 3-6-21; 327 IAC 3-6-22; 327 IAC 3-6-23; 327 IAC 3-6-24; 327 IAC 3-6-25; 327 IAC 3-6-26; 327 IAC 3-6-27; 327 IAC 3-6-28; 327 IAC 3-6-29; 327 IAC 3-6-30; 327 IAC 3-6-31; 327 IAC 3-6-32.

RULES TO EXPIRE: None.

AUTHORITY: IC 13-14-9.5.

HISTORY

First Notice of Comment Period: March 1, 2005, Indiana Register (28 IR 1865).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

This rulemaking is required pursuant to IC 13-14-9.5, which provides for the expiration and readoption of administrative rules. A rule that was adopted under a provision of IC 13 and was in force on December 31, 1995, expires not later than January 1, 2002. All rules adopted after that date under IC 13-14-9, expire on January 1 of the seventh year after the year in which each rule takes effect. The rules listed to be readopted have an expiration date of January 1, 2006. IDEM has chosen to readopt all affected rules at one time rather than readopt each rule separately as its expiration date approaches.

Under IC 13-14-9.5-4, the department or board that has rulemaking authority under Title 13 may readopt all rules subject to expiration under one (1) rule that lists all rules that are readopted by their titles and subtitles only. If no comments are received during this first comment period, IDEM may submit the rule for filing with the secretary of state under IC 4-22-2-35 and publish notice in the Indiana Register that the agency has readopted the rule.

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-9.5-4 requires that the following procedure be followed to readopt rules:

(1) A notice listing all rules to be readopted by their titles and subtitles shall be submitted to Legislative Services Agency for publication in the Indiana Register.

(2) If a person submits a written request and a basis for the request during the first comment period that a particular rule be readopted separately from the readoption rule that readopts all rules in one rulemaking, the agency must:

(A) readopt that rule separately from the readoption rule; and

(B) follow the procedure for adoption of administrative rules under IC 13-14-9 with respect to that rule.

(3) If no written request is provided within the first comment period, the agency may submit the rule for filing with the secretary of state under IC 4-22-2-35 and publish notice in the Indiana Register that the agency has readopted the rule.

NOTICE OF READOPTION

The following rules received no comments during the first notice of comment period and are not exempt from the readoption process under IC 13-14-9.5:

327 IAC 3-2-2
327 IAC 3-2-2.5
327 IAC 3-2-4
327 IAC 3-2-6
327 IAC 3-6-1
327 IAC 3-6-2
327 IAC 3-6-3
327 IAC 3-6-4
327 IAC 3-6-5
327 IAC 3-6-6
327 IAC 3-6-7
327 IAC 3-6-8
327 IAC 3-6-9
327 IAC 3-6-10
327 IAC 3-6-11
327 IAC 3-6-12
327 IAC 3-6-13
327 IAC 3-6-14
327 IAC 3-6-15
327 IAC 3-6-16
327 IAC 3-6-17
327 IAC 3-6-18
327 IAC 3-6-19
327 IAC 3-6-20
327 IAC 3-6-21
327 IAC 3-6-22
327 IAC 3-6-23
327 IAC 3-6-24
327 IAC 3-6-25
327 IAC 3-6-26
327 IAC 3-6-27
327 IAC 3-6-28
327 IAC 3-6-29
327 IAC 3-6-30
327 IAC 3-6-31
327 IAC 3-6-32

Therefore, the above-listed rules are readopted pursuant to IC 13-14-9.5-4. The rules will be submitted to the secretary of state for filing and will be effective thirty (30) days after that filing date. The rules will remain in effect until their next expiration date, January 1, 2013. However, all rules are subject to amendment or repeal under IDEM's regular rulemaking process found at IC 13-14-9.

Filed with Secretary of State: April 11, 2005, 2:45 p.m.

TITLE 329 SOLID WASTE MANAGEMENT BOARD

FIRST NOTICE OF COMMENT PERIOD
#05-66(SWMB)

DEVELOPMENT OF NEW RULES AND AMENDMENTS TO RULES CONCERNING THE 2005 UPDATE TO THE HAZARDOUS WASTE MANAGEMENT PROGRAM AT 329 IAC 3.1

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules and amendments to rules in 329 IAC 3.1 concerning the following:

- Incorporating by reference the July 1, 2005, edition of the federal hazardous waste management regulations in 40 CFR 260 through 40 CFR 273, including four (4) federal changes to the hazardous waste management program that were published in the Federal Register between April 22, 2004, through March 4, 2005, concerning:
  - rules implementing the National Environmental Performance Track System,
  - National Emission Standards for Hazardous Air Pollutants (NESHAP): Coating of Automobiles and Light-Duty Trucks,
  - Hazardous Waste - Nonwastewaters from Production of Dyes, Pigments, and Food, Drug, and Cosmetic Colorants; Mass Loadings-Based Listing, and
  - Modification of the Hazardous Waste Manifest System.
  - If promulgated by the U.S. Environmental Protection Agency (EPA) on or before June 30, 2005, any or all of the following federal changes to the hazardous waste management system will also be included in the July 1, 2005, edition of 40 CFR 260 through 40 CFR 273:
    - Standardized Permit for Resource Conservation and Recovery Act (RCRA) Hazardous Waste Management Facilities,
    - Methods Innovation Rule,
    - NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combusters (Phase I Final Replacement Standards and Phase II), and
    - Hazardous Waste Management System; Modification of the Hazardous Waste Program: Mercury-Containing Equipment.
- Changes to the listing of chemical munitions as acute hazardous waste in 329 IAC 3.1-6-3 to more accurately describe the actual requirements generators of those wastes must follow.

IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

CITATIONS AFFECTED: 329 IAC 3.1-1-7; 329 IAC 3.1-6-3.

AUTHORITY: IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 13-19-3-1; IC 13-22-2; 40 U.S.C. 6926; 40 U.S.C. 6929; 40 CFR 271.21.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

Sections 3006 and 3009 of Resource Conservation and Recovery Act, as amended (RCRA) (42 U.S.C. 6926 and 42 U.S.C. 6929, respectively) allow a state to administer and enforce a state hazardous waste program. If EPA determines that program to be equivalent to the federal program, EPA can authorize the state to administer the state program in lieu of the federal program. The authorized state must then maintain that program to be at least as stringent as the federal hazardous waste program. The authorized state is required to adopt EPA

changes to the federal program that are more stringent or broader in scope than the existing federal program. Authorized states are not required to adopt federal amendments to the hazardous waste regulations that are less stringent than the existing federal hazardous waste program. However, in many cases, federal amendments that are less stringent involve streamlining, cost reduction, or implement other regulatory reduction initiatives.

This rulemaking would incorporate by reference the federal hazardous waste management regulations at 40 CFR 260 through 40 CFR 273, revised as of July 1, 2005, including the following amendments listed in Table 1 that were published by the EPA in the Federal Register from April 22, 2004, through March 4, 2005:

Table 1.

Federal Register	Publication Date	Subject
69 FR 21737 69 FR 62217	April 22, 2004 October 25, 2004	National Environmental Performance Track System
69 FR 22602	April 26, 2004	NESHAP: Surface Coating of Automobiles and Light-Duty Trucks
70 FR 9138	February 24, 2005	Hazardous Waste - Nonwastewaters from Production of Dyes, Pigments, and Food, Drug, and Cosmetic Colorants; Mass Loadings-Based Listing
70 FR 10776	March 4, 2005	Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System

The federal rules listed above are amendments to the federal hazardous waste regulations that would be incorporated by reference in the Indiana hazardous waste management rules at 329 IAC 3.1.

Two of these amendments (the national environmental performance track system and the NESHAP for surface coating of automobiles and light-duty trucks) are optional (less stringent) but are proposed to be adopted to maintain consistency with the federal program and to allow regulated entities to realize the benefits of those changes. These amendments were adopted under authorities that existed prior to the 1984 Hazardous and Solid Waste Amendments to RCRA. As a result, these amendments will not go into effect in Indiana until adopted in Indiana rules. You can find an explanation of this process in the final rule published in the Federal Register on April 22, 2004, Section III.B.4. "How Will Today's Rule Affect Applicability of RCRA Rules in Authorized States?"at 69 FR 21749.

In contrast to the optional rules described above, authorized states are required by RCRA Section 3009, 40 CFR 271.4 and 40 CFR 271.10 to adopt the following rules to maintain consistency with the federal hazardous waste program:

- Hazardous Waste - Nonwastewaters from Production of Dyes, Pigments, and Food, Drug, and Cosmetic Colorants; Mass Loadings-Based Listing (70 FR 9138).
- Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System (70 FR 10776).

Both of these amendments are more stringent than the current federal hazardous waste program. RCRA Section 3009 (42 U.S.C. 6929) requires authorized states to maintain their hazardous waste programs to be at least as stringent as the federal program to retain authorization for the state program.

The mass loadings-based listing rule lists specific nonwastewaters from production of dyes, pigments, and food, drug and cosmetic colorants as hazardous wastes. This amendment will add a new hazardous waste code (K181) to 40 CFR 261.32, "Hazardous wastes from specific sources," and adds new treatment standards and universal treatment standards to 40 CFR 268.40. This amendment is promulgated under the Hazardous and Solid Waste Amendments of 1984 (HSWA). As a result, these provisions will go into effect on August 23, 2005, regardless of whether they are adopted as Indiana rules. (See the discussion of the effects of HSWA authority in Section VI. "State Authority and Compliance," at 70 FR 9167 through 70 FR 9168.)

The hazardous waste manifest modification rule modifies the Uniform Hazardous Waste Manifest and requires its use nationwide. Because the federal compliance date for use of the revised hazardous waste manifest form is delayed twelve (12) months from the effective date of the federal rule on September 6, 2005, the effective date of this portion of the incorporation by reference will be delayed until September 5, 2006. To ensure that a system for managing rejected loads is in place for use by regulated entities, the existing rejected load provisions in 329 IAC 3.1-7.5 will be repealed on the same date that the revised manifest rule provisions are effective. (See the discussion of this delayed compliance date in the preamble to the federal hazardous waste manifest rule in section II.H "Delayed Compliance Date for Revised Form" at 70 FR 10793 through 10795.) The manifest modification rule also makes new provisions for rejected loads of hazardous waste that will supercede the current requirements in 329 IAC 3.1-7.5. These amendments were promulgated under RCRA authority that pre-existed HSWA authority. As a result, these amendments will not become effective until adopted in Indiana rules. Failure to adopt these amendments at the same time as the rest of the nation may result in inconvenience and additional expense to regulated entities in Indiana.

In addition to the federal amendments described above that have already been promulgated, EPA has proposed to adopt the following amendments to the hazardous waste management program. These proposed amendments are scheduled for final action during the first half of 2005 in the EPA's semiannual regulatory agenda published in the Federal Register on December 13, 2004 at 69 FR 73786 through 69 FR 73940. The federal notices of proposed rulemaking that describe these proposed amendments are listed in Table 2 as follows:

Table 2.

Federal Register	Publication Date	Subject
66 FR 52192	October 12, 2001	Standardized Permit for RCRA Hazardous Waste Management Facilities (RIN: 2050-AE44)
67 FR 66252	October 30, 2002	Methods Innovation Rule (RIN: 2050-AE41)
69 FR 21197	April 20, 2004	NESHAPs: Standards for Hazardous Air Pollutants for Hazardous Waste Combusters (Phase I Final Replacement Standards and Phase II) (RIN: 2050-AE01)
67 FR 40507	June 12, 2002	Hazardous Waste Management System; Modification of the Hazardous Waste Program: Mercury-Containing Equipment (RIN: 2050-AG21)

IDEM intends to incorporate by reference any or all of the amendments described in Table 2 above if they are promulgated by EPA on or before June 30, 2005 (the final date for changes to be included in the July 1, 2005 edition of Title 40, Chapter I of the Code of Federal Regulations), and IDEM is specifically soliciting comment on these proposed amendments.

In addition to incorporating recent federal amendments, IDEM proposes to amend 329 IAC 3.1-6-3 to more accurately describe the requirements for management of these acute hazardous wastes. The 2003 Hazardous Waste Annual Update amended 329 IAC 3.1-6-3 to clarify that chemical munitions including VX (O-ethyl-S-(2-diisopropylaminoethyl) methyl phosphonothiolate) are acute hazardous wastes. This amendment provided that chemical munitions listed in this section must be managed in accordance with the requirements for acute hazardous wastes in the hazardous waste program. This amendment also provided that the commissioner can establish alternate requirements for these wastes. This last provision resulted in some confusion over what the alternate requirements would be and what they would be based on. In this rule IDEM intends to clarify what the alternate requirements are. The sole generator of I001 waste - the U.S. Army Newport Chemical Depot - has requested to use the satellite accumulation provisions in 40 CFR 262.34(c). IDEM has evaluated that request and determined that it will promote safety and help to expedite the disposal operation. IDEM is proposing to amend this section to remove the general statement about "alternate requirements" and substitute language that specifically allows use of those satellite accumulation provisions.

Alternatives to be Considered Within the Rulemaking

There are no alternatives to rulemaking to accomplish the purposes of this notice. IDEM is considering nine (9) alternatives in this rulemaking, as follows:

Alternative 1. Adopt the National Environmental Performance Track System as promulgated in the Federal Register on April 22, 2004 (69 FR 21737) and corrected on October 25, 2004 (69 FR 62217). This rule revises the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations to allow hazardous waste generators who are members of Performance Track up to one hundred eighty (180) days, and in certain cases two hundred seventy (270) days, to accumulate their hazardous waste without a RCRA permit or interim status. It includes simplified reporting requirements for facilities that are members of Performance Track and governed by Maximum Available Control Technology (MACT) provisions of the Clean Air Act (CAA). Seven (7) Indiana facilities are Performance Track members. Because this rule is adopted under RCRA authority that existed prior to the 1984 Hazardous and Solid Waste Amendments, this amendment will not be effective in Indiana until the Solid Waste Management Board (board) adopts it in state rules.

- *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* This is an incorporation by reference of the federal regulation.
- *Is this alternative imposed by federal law or is there a comparable federal law?* Because this rule is less stringent than the current federal hazardous waste regulations, this rule is optional and is not required to be adopted under RCRA Section 3006.
- *If this alternative is a federal requirement, is it different from federal law?* While federal law does not include this requirement, it is identical to the federal amendments published in the April 22, 2004, final rule and the corrections published in the October 25, 2004, Federal Register.
- *If it is different, describe the differences.* There are no differences.

Alternative 2. Adopt the changes to the hazardous waste program included in the NESHAP for Surface Coating of Automobiles and Light-Duty Trucks as promulgated in the Federal Register on April 26, 2004 (69 FR 22602). This rule amends the Resource Conservation and Recovery Act (RCRA) Air Emission Standards for Equipment Leaks at 40 CFR parts 264 and 265, subparts BB, for owners and operators of hazardous waste treatment, storage, and disposal facilities to exempt air emissions from certain activities covered by the final NESHAP from these RCRA standards.

- *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* This is an incorporation by reference of the federal regulation.
- *Is this alternative imposed by federal law or is there a comparable federal law?* This rule is less stringent than the current federal hazardous waste regulations, therefore it is not required to be adopted under RCRA Section 3006.
- *If this alternative is a federal requirement, is it different from federal law?* While federal law does not include this requirement, it is identical to the federal amendments published in the April 26, 2004, final rule.
- *If it is different, describe the differences.* There are no differences.

Alternative 3. Adopt the Mass Loading-Based Listing of Non-Wastewaters from the Production of Selected Organic Dyes, Pigments, and Food, Drug, and Cosmetic Colorants Rule, as promulgated in the Federal Register on February 24, 2005 (70 FR 9138). This amendment proposes to list nonwastewaters from the production of certain dyes, pigments, and FD&C colorants as hazardous wastes under RCRA, which directs EPA to determine whether these wastes present a hazard to human health or the environment. EPA is proposing a mass loading-based approach for these wastes. Under this approach, these wastes are hazardous if they contain any of the constituents of concern at annual mass loading levels that meet or exceed regulatory levels. If generators determine that their wastes are below regulatory levels for all constituents of concern, then their wastes are nonhazardous. If their wastes meet or exceed the regulatory levels for any of eight specific constituents of concern, the wastes must be managed as listed hazardous wastes. However, even if the wastes meet or exceed the regulatory levels, the wastes would not be hazardous if two conditions are met: (1) The wastes do not meet or exceed annual mass loadings for toluene-2,4-diamine, and (2) the wastes are disposed of in a Subtitle D landfill cell subject to the municipal solid waste landfill design criteria or in a Subtitle C landfill cell subject to applicable design criteria. When mass loadings meet or exceed the specified annual levels, the generator may still manage as nonhazardous all wastes generated up to the loading limit. This proposal would also add the toxic constituents o-anisidine, p-cresidine, 1,2-phenylenediamine, 1,3-phenylenediamine, and 2,4-dimethylaniline associated with these identified wastes to the list of constituents that serves as the basis for classifying wastes as hazardous. In addition, this proposal would establish treatment standards for the wastes. If these dyes and/or pigments production wastes are listed as hazardous waste, then they will be subject to stringent management and treatment standards under Subtitle C of RCRA. Additionally, this rule proposes to designate these wastes as hazardous substances subject to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The proposal would not adjust the one (1) pound statutory reportable quantity (RQ) for K181 waste, nor would EPA develop a "reference RQ" for the new constituents identified for K181. Other actions proposed in this notice would add o-anisidine, p-cresidine, 1,3-phenylenediamine, toluene-2,4-diamine, and 2,4-dimethylaniline to the treatment standards applicable to multisource leachate and also to add these chemicals to the Universal Treatment Standards. As a result, a single waste code would continue to be applicable to multisource landfill leachates and residues of characteristic wastes would require treatment when any of these chemicals are present above the proposed land disposal treatment standards.

- *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* This is an incorporation by reference of the federal regulation.

- *Is this alternative imposed by federal law or is there a comparable federal law?* These changes are more stringent than the existing federal hazardous waste program, therefore they must be adopted as required by RCRA Section 3009.
- *If this alternative is a federal requirement, is it different from federal law?* This provision is identical to the federal amendments promulgated in the Federal Register.
- *If it is different, describe the differences.* There will be no substantive differences.

Alternative 4. Adopt the rules for Modification of the Hazardous Waste Manifest System as promulgated in the Federal Register on March 4, 2005 (70 FR 10776). This rule establishes new requirements revising the Uniform Hazardous Waste Manifest regulations and the manifest and continuation sheet forms used to track hazardous waste from a generator's site to the site of its disposition. These revisions will standardize the content and appearance of the manifest form and continuation sheet (Forms 8700-22 and 8700-22a), make the forms available from a greater number of sources and adopt new procedures for tracking certain types of shipments with the manifest. The latter types of shipments include hazardous wastes that are rejected by the destination facility (rejected loads), wastes consisting of residues from non-empty hazardous waste containers, and wastes entering or leaving the United States. This rule must be adopted to maintain EPA authorization for this program, as required by 40 CFR 271, since failure to adopt it would result in a program that is inconsistent with the federal program.

- *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* This is an incorporation by reference of the federal regulation.
- *Is this alternative imposed by federal law or is there a comparable federal law?* This rule is required to be adopted under RCRA Section 3006 and 40 CFR 271.
- *If this alternative is a federal requirement, is it different from federal law?* This rule is identical to the federal amendments published in the March 4, 2005, final rule.
- *If it is different, describe the differences.* There are no differences.

Alternative 5. Adopt the Standardized Permit for RCRA Hazardous Waste Management Facilities, if it is promulgated by EPA on or before June 30, 2005. This amendment would revise the RCRA hazardous waste permitting program to allow a "standardized permit." The standardized permit would be available to facilities that generate hazardous waste and then manage the waste in units such as tanks, containers, and containment buildings. The standardized permit process should streamline the permit process by allowing facilities to obtain and modify permits more easily while maintaining the protectiveness currently existing in the individual RCRA permit process.

- *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* This is an incorporation by reference of the federal regulation.
- *Is this alternative imposed by federal law or is there a comparable federal law?* This rule will be neither more or less stringent than the current federal hazardous waste regulations, therefore it is not required to be adopted under RCRA Section 3006.
- *If this alternative is a federal requirement, is it different from federal law?* If it is promulgated by EPA on or before June 30, 2005, this requirement will be adopted as promulgated in the Federal register without substantive changes.
- *If it is different, describe the differences.* There are no differences.

Alternative 6. Adopt the Methods Innovation Rule if it is promulgated by EPA on or before June 30, 2005. This rule proposes to amend a variety of testing and monitoring requirements throughout the Resource Conservation and Recovery Act (RCRA) regulations. It proposes to allow more flexibility when conducting RCRA-related sampling and analysis, by removing unnecessary required uses of methods found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," also known as "SW-846," and only retaining the requirement to use SW-846 methods when the method is the only one capable of measuring a particular property (i.e., it is used to measure a required method-defined parameter). This is an important step towards a performance-based measurement system (PBMS), as part of the Agency's efforts towards Innovating for Better Environmental Results. Additionally, it proposes to: withdraw the reactivity method guidelines from SW-846 Chapter Seven; amend the ignitability and corrosivity hazardous waste characteristic regulations by clarifying the use of certain methods; incorporate by reference Update IIIB to SW-846; add Method 25A for analyses conducted in support of certain RCRA air emission standards; and remove a confidence limit requirement for certain feedstream analyses conducted under the National Emission Standards for Hazardous Air Pollutants (NESHAP). These changes should make it easier and more cost effective to comply with affected regulations, without compromising human health or environmental protection.

- *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* This is an incorporation by reference of the federal regulation.
- *Is this alternative imposed by federal law or is there a comparable federal law?* Because these changes are not more stringent or broader in scope than the existing federal hazardous waste program, they are not required to be adopted under RCRA Section 3006.
- *If this alternative is a federal requirement, is it different from federal law?* If it is promulgated by EPA on or before June 30, 2005, this provision will be identical to the federal amendments promulgated in the Federal Register.
- *If it is different, describe the differences.* There will be no substantive differences.

Alternative 7. Adopt the NESHAPs: Standards for Hazardous Air Pollutants for Hazardous Waste Combusters (Phase I Final Replacement Standards and Phase II) Rule, if it is promulgated by EPA on or before June 30, 2005. This amendment proposes national emission standards for hazardous air pollutants (NESHAP) for hazardous waste combusters. These combusters include hazardous waste burning incinerators, cement kilns, lightweight aggregate kilns, industrial/commercial/institutional boilers and process heaters, and hydrochloric acid production furnaces, known collectively as hazardous waste combusters (HWCs). EPA has identified these HWCs as major sources of hazardous air pollutant (HAP) emissions. These proposed standards will, when final, implement section 112(d) of the Clean Air Act (CAA) by requiring hazardous waste combusters to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). The HAP emitted by facilities in the incinerator, cement kiln, lightweight aggregate kiln, industrial/commercial/institutional boiler, process heater, and hydrochloric acid production furnace source categories include arsenic, beryllium, cadmium, chromium, dioxins and furans, hydrogen chloride and chlorine gas, lead, manganese, and mercury. Exposure to these substances has been demonstrated to cause adverse health effects such as irritation on the lung, skin, and mucus membranes, effects on the central nervous system, kidney damage, and cancer. The adverse health effects associated with the exposure to these specific HAPs are further described in the preamble. In general, these findings have only been shown with concentrations higher than those typically in the ambient air.

- *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* This is an incorporation by reference of the federal regulation.
- *Is this alternative imposed by federal law or is there a comparable federal law?* Because these changes are more stringent than the existing federal hazardous waste program, they must be adopted as required by RCRA Section 3006.
- *If this alternative is a federal requirement, is it different from federal law?* If it is promulgated by EPA on or before June 30, 2005, this provision will be identical to the federal amendments promulgated in the Federal Register.
- *If it is different, describe the differences.* There will be no substantive differences.

Alternative 8. Adopt the Modification of the Hazardous Waste Program: Mercury-Containing Equipment Rule, if it is promulgated by EPA on or before June 30, 2005. Many used items of mercury-containing equipment are currently classified as characteristic hazardous wastes under RCRA. As a result, they are subject to the hazardous waste regulations of RCRA Subtitle C unless they come from a household or a conditionally exempt small quantity generator. This amendment proposes to streamline management requirements for used mercury-containing equipment by adding it to the federal list of universal wastes.

- *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* This is an incorporation by reference of the federal regulation.
- *Is this alternative imposed by federal law or is there a comparable federal law?* Because these changes are less stringent than the existing federal hazardous waste program, they are not required to be adopted under RCRA Section 3006.
- *If this alternative is a federal requirement, is it different from federal law?* If it is promulgated by EPA on or before June 30, 2005, this provision will be identical to the federal amendments promulgated in the Federal Register.
- *If it is different, describe the differences.* There will be no substantive differences.

Alternative 9. Amend 329 IAC 3.1-6-3 to allow use of the satellite accumulation provisions in 40 CFR 262.34(c) by Newport Chemical Depot.

- *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* This is an application of a federal standard to an Indiana hazardous waste.
- *Is this alternative imposed by federal law or is there a comparable federal law?* No.
- *If this alternative is a federal requirement, is it different from federal law?* While I001 wastes are not federal hazardous wastes, we are requiring them to be managed under the provisions for acute hazardous wastes where appropriate.
- *If it is different, describe the differences.* With the exception of allowing use of the satellite accumulation provisions, there are no substantive differences from the federal hazardous waste program.

Additional Alternatives

This notice specifically solicits comment on the alternatives listed above and any other alternatives that would accomplish the purpose of this rule. Based on the comments received on this notice, additional alternatives may be considered.

Applicable Federal Law

Sections 3006 and 3009 of RCRA and 40 CFR 271 require states that choose to administer and enforce a hazardous waste management program in lieu of the federal program to adopt rules that are at least as stringent as the federal program. These programs can be authorized by the EPA to operate in lieu of the federal hazardous waste program. If the EPA Administrator determines that a state is not maintaining its program to be at least as stringent as the federal program, that authorization can be withdrawn. Rules that are not more stringent than the existing federal program are not required to be adopted unless they must be adopted under separate authority to maintain consistency with the federal program.

40 CFR 260 through 40 CFR 273 contain the federal hazardous waste program. These regulations have been incorporated by reference in 329 IAC 3.1. The amendments proposed in this rule would make 329 IAC 3.1 as consistent as possible with the federal hazardous waste program.

Potential Fiscal Impact

As required by IC 13-14-9-3(a)(2)(B) (added by P.L. 240-2003, SECTION 4), alternatives 1, 2, 5, 6, and 8 are not required to be adopted under federal law. However, all alternatives considered in this notice are either currently included, or proposed to be included, in the federal hazardous waste program. These alternatives may or may not be imposed under federal law and may potentially have the following fiscal impact:

Potential Fiscal Impact of Alternative 1. The fiscal impact of this alternative is estimated to be a savings of one thousand, three hundred fifty dollars ($1,350.00) per facility per year, or nine thousand, four hundred fifty dollars ($9,450.00) per year for the seven (7) Performance Track facilities in Indiana, as described in the final rule published April 22, 2004 (Section IV.A. "What Are the Cost and Economic Impacts?", at 69 FR 21749).

Potential Fiscal Impact of Alternative 2. The fiscal impact of this alternative is estimated to be no additional costs or savings resulting from this amendment. This amendment excludes facilities that surface coat automobiles and light-duty trucks and that are affected by the NESHAP from compliance with 40 CFR 264, Subpart BB. See the final rule published April 26, 2004, Section V.B. "What Are the Cost Impacts?" at 69 FR 22618.

Potential Fiscal Impact of Alternative 3. The total compliance costs of this alternative are estimated by EPA to range from four hundred ninety thousand dollars ($490,000) per year to two million, three hundred eighty thousand dollars ($2,380,000) per year nationwide, or nine thousand, eight hundred dollars ($9,800) per year to forty-seven thousand, six hundred dollars ($47,600) per year to regulated entities in Indiana, assuming that the compliance costs in Indiana are two percent (2%) of the national cost. The economic impact of these amendments is estimated by EPA to range from negligible to two hundred thirty-eight thousandths percent (0.238%) of gross corporate revenues. See the analysis of the economic impacts of this rule in Section VIII.A., "Executive Order 12866: Regulatory Planning and Review," beginning at 70 FR 9169 of the February 24, 2005, final rule.

Potential Fiscal Impact of Alternative 4. The fiscal impact of this alternative is estimated to be a four percent (4%) to five percent (5%) average annual paperwork burden reduction for regulated entities in Indiana and state government, representing a cost savings of approximately two hundred fifty-four thousand dollars ($254,000) to four hundred twelve thousand dollars ($412,000) to regulated entities in Indiana, based on two percent (2%) of the national economic impact cited in the final rule published on March 4, 2005 in Section VII.A. "Executive Order 12866: Regulatory Planning and Review" at 70 FR 10811 through 10812.

Potential Fiscal Impact of Alternative 5. The fiscal impact of this alternative is estimated to be a net annual savings of seven thousand two hundred dollars ($7,200) to eleven thousand two hundred dollars ($11,200) to regulated entities in Indiana, based on two percent (2%) of the national economic impact cited in the proposed rule published on October 12, 2001 (Section XII.A. "Executive Order 12866" at 66

FR 52238).

Potential Fiscal Impact of Alternative 6. The fiscal impact of this alternative is unquantifiable at this time. The EPA has not published an economic impact analysis for this proposed rule.

Potential Fiscal Impact of Alternative 7. The fiscal impact of this alternative cannot be reliably quantified at this time. See the estimates of the economic impact for this proposed amendment published in the April 20, 2004, proposed rule at 69 FR 21349 through 69 FR 21359.

Potential Fiscal Impact of Alternative 8. The fiscal impact of this alternative is estimated to be a net annual savings of five thousand four hundred sixty dollars ($5,460) to regulated entities in Indiana, based on two per cent (2%) of the national economic impact as described in the proposed rule published on June 12, 2002 (Section VI.A. "Executive Order 12866," at 67 FR 40521 through 67 FR 40522).

Potential Fiscal Impact of Alternative 9. The Newport Chemical Depot has not estimated the potential economic impact of this amendment to their program to dispose of chemical munitions. IDEM has no independent information to use to estimate this economic impact. If IDEM obtains additional information on the economic impact of this amendment to the Newport Chemical Depot, that information will be included in the Second Notice of Comment Period.

Public Participation and Workgroup Information

We may establish an external workgroup to discuss issues involved in this rulemaking. The workgroup, if established, would be made up of department staff and a cross-section of stakeholders. If you believe a work group would further the purposes of this rule and result in better rulemaking, and you wish to participate in the workgroup, please submit your name, mailing address, telephone number, e-mail address, and the area(s) of interest you wish to represent to:

#05-66(SWMB) [2005 Hazardous Waste Annual Update Work Group]
Marjorie Samuel
Office of Land Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204

If too many applications are received to form a functional work group, the department will select a representative group from the applications on file.

The formation of a work group, if it occurs, will be announced on IDEM's rulemaking website: http://www.in.gov/idem/rules/.

If a work group is formed and you wish to provide comments to the workgroup on the rulemaking, attend meetings, or submit suggestions related to the workgroup process, please contact Steve Mojonnier, Rules, Planning and Outreach Section, Office of Land Quality at (317) 233-1655 or (800) 451-6027 (in Indiana). Please provide your name, phone number and e-mail address, if applicable, where you can be contacted.

The public is also encouraged to submit comments and questions directly to members of the workgroup who represent their particular interests in the rulemaking. If a work group is established, a list of workgroup members and the interests they represent will be provided on request.

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

(1) All existing physical conditions and the character of the area affected.

(2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.

(3) Zoning classifications.

(4) The nature of the existing air quality or existing water quality, as the case may be.

(5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.

(6) Economic reasonableness of measuring or reducing any particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

(1) The submission of alternative ways to achieve the purpose of the rule.

(2) The submission of suggestions for the development of draft rule language.

(3) The submission of information on the fiscal impact of each alternative identified in this notice.

Mailed comments should be addressed to:

#05-66(SWMB) [2005 Hazardous Waste Annual Update]
Marjorie Samuel
Office of Land Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204

Hand delivered comments will be accepted by the receptionist on duty at the eleventh floor reception desk, Office of Land Quality, 100 North Senate Avenue, Eleventh Floor East, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-3403, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules, Planning and Outreach Section at (317) 232-1655 or (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by May 31, 2005.

Additional information regarding this action may be obtained from Steve Mojonnier of the Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or call (800) 451-6027 (in Indiana), press zero (0), and ask for extension 3-1655. Additional information on this rule may also be found on IDEM's rulemaking Web site at http://www.in.gov/idem/rules/.

Bruce H. Palin
Assistant Commissioner
Office of Land Quality

Other Notices

STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS
INDIANA PROFESSIONAL LICENSING AGENCY
402 WEST WASHINGTON STREET, ROOM W072
INDIANAPOLIS, INDIANA 46204

CONTINUING EDUCATION REQUIREMENTS FOR PROFESSIONAL ENGINEERS

The State Board of Registration for Professional Engineers will hold an open forum to consider rules to require continuing education for professional engineers under Indiana Code § 25-31-1-17.5. The open forum will be held on May 12, 2005, in Room C of the Conference Center, Indiana Government Center-South, 402 West Washington Street, Indianapolis, Indiana 46204 at 9:00 a.m.

If you have any questions, please contact the Board by phone at (317) 234-3049 or by e-mail at pla10@pla.in.gov.

INDIANA STATE DEPARTMENT OF HEALTH
MONTHLY CALCULATION
March 2005

INCOME ELIGIBILITY GUIDELINES FOR THE WIC / MCH / CSHCS/HOOSIER HEALTHWISE PROGRAMS
BASED ON HEALTH AND HUMAN SERVICES POVERTY INCOME GUIDELINES
PROGRAM IMPLEMENTATION DATES LISTED BELOW

CSHCS: February 18, 2005 **MCH/Hoosier Healthwise: April 1, 2005** **WIC: July 1, 2005**

The following information must be used by all MCH funded projects, WIC programs, CSHCS programs, and Hoosier Healthwise (HH) recorded on the appropriate enrollment forms. Guidelines for use of this form are as follows: (all calculations other than 185% are calculated from HCFA income guidelines).

CSHCS: To be financially eligible for CSHCS, the gross household income must be less than or equal to 250% of the federal poverty income guidelines. Household means a group of related or non-related individuals who are not residents of an institution, but who are living as one economic unit. The applicant must also be medically eligible to receive services.

MCH: The payment level for MCH Services is at the bottom of the form. It ranges from no charge at or below 100% of federal poverty guidelines to patients being charged the full cost of service (100%) at greater than 200% of federal poverty guidelines. Assignment of an MCH payment level category is based on the participant's annual family/household (economic unit) gross income and size with regard for extenuating circumstances (i.e., substantial financial debt, family members with extraordinary medical bills). The participant's payment level category must be updated annually. This payment level is for persons without insurance to cover services.

WIC: Please note that there is no charge for WIC services and WIC income eligibility cannot exceed 185% of the poverty income levels. Proof of income is required to receive WIC benefits. No allowances for extenuating circumstances can be made. Total household income (gross) must be used; except for self-employed persons, such as a farmer or a small business owner. For this special group use gross income less business expenses. Household consists of a group of related or non-related individuals who are not residents of an institution but who are living as one economic unit.

HH: For a pregnant woman and/or child 0-18, to be financially eligible for package A and B Hoosier Healthwise, the gross economic unit income must be less than or equal to 150% of the federal poverty income. Children 0-19 are eligible for Package C (required variable premium payment) up to 200% of federal poverty income guidelines.

NOTE: CSHCS defines a pregnant woman as one family member. MCH and WIC define a pregnant woman as two family members.

HOUSEHOLD SIZE:	100% MONTHLY Income Starting At	HH A & B 150% MONTHLY Income Equal To Or Less Than	HH Partial Premium Package C 175% MONTHLY Income Equal To Or Less Than	USDA / WIC Standard 185% MONTHLY Income Equal To Or Less Than	HH Full Premium Package C 200% MONTHLY Income Equal To Or Less Than	CSHCS 250% MONTHLY Income Equal To Or Less Than
Size	100%	150%	175%	185%	200%	250%
1	$798	$1,197	$1,396	$1,476	$1,595	$1,995
2	$1,070	$1,604	$1,872	$1,978	$2,139	$2,675
3	$1,341	$2,012	$2,347	$2,481	$2,682	$3,355
4	$1,613	$2,419	$2,822	$2,984	$3,225	$4,035
5	$1,885	$2,827	$3,298	$3,486	$3,769	$4,715
6	$2,156	$3,234	$3,773	$3,989	$4,312	$5,395
7	$2,428	$3,642	$4,249	$4,491	$4,855	$6,075
8	$2,700	$4,049	$4,724	$4,994	$5,399	$6,755
9	$2,971	$4,457	$5,199	$5,497	$5,942	$7,435
10	$3,243	$4,864	$5,675	$5,999	$6,485	$8,115
11	$3,515	$5,272	$6,150	$6,502	$7,029	$8,795
12	$3,790	$5,679	$6,626	$7,004	$7,572	$9,475
Each additional member add	+ $272	+ $408	+ $475	+ $503	+ $544	+ $680
*MCH	<100% 0%	101%-150% **1 – 25%	151% 25%	to 185% to 50%	186% - 200% 50%	201% - 250% 75%

Base Poverty Level is: $798. Federal Register Vol. 70, No. 33, February 18, 2005
***MCH Percentage used to calculate MCH charges. If income is greater than 250%, charge 100%.**
****Clinic choice 1-24% for the cost of service except those covered by HH.**

ANNUAL CALCULATION

March 2005

INCOME ELIGIBILITY GUIDELINES FOR THE WIC / MCH / CSHCS/ HOOSIER HEALTHWISE PROGRAMS
BASED ON HEALTH AND HUMAN SERVICES POVERTY INCOME GUIDELINES

PROGRAM IMPLEMENTATION DATES LISTED BELOW

CSHCS: February 18, 2005 **MCH/Hoosier Healthwise: April 1, 2005** **WIC: July 1, 2005**

The following information must be used by all MCH funded projects, WIC programs, CSHCS programs, and Hoosier Healthwise (HH) recorded on the appropriate enrollment forms. Guidelines for use of this form are as follows: (all calculations other than 185% are calculated from HCFA income guidelines).

CSHCS: To be financially eligible for CSHCS, the gross household income must be less than or equal to 250% of the federal poverty income guidelines. Household means a group of related or non-related individuals who are not residents of an institution, but who are living as one economic unit. The applicant must also be medically eligible to receive services.

MCH: The payment level for MCH Services is at the bottom of the form. It ranges from no charge at or below 100% of federal poverty guidelines to patients being charged the full cost of service (100%) at greater than 200% of federal poverty guidelines. Assignment of an MCH payment level category is based on the participant's annual family/household (economic unit) gross income and size with regard for extenuating circumstances (i.e., substantial financial debt, family members with extraordinary medical bills). The participant's payment level category must be updated annually. This payment level is for persons without insurance to cover services.

WIC: Please note that there is no charge for WIC services and WIC income eligibility cannot exceed 185% of the poverty income levels. Proof of income is required to receive WIC benefits. No allowances for extenuating circumstances can be made. Total household income (gross) must be used; except for self-employed persons, such as a farmer or a small business owner. For this special group use gross income less business expenses. Household consists of a group of related or non-related individuals who are not residents of an institution but who are living as one economic unit.

HH: For a pregnant woman and/or child 0-19, to be financially eligible for package A and B Hoosier Healthwise, the gross economic unit income must be less than or equal to 150% of the federal poverty income. Children 0-19 are eligible for Package C (required variable premium payment) up to 200% of federal poverty income guidelines.

NOTE: CSHCS defines a pregnant woman as one family member. MCH and WIC define a pregnant woman as two family members.

HOUSE HOLD SIZE: Size	100% ANNUAL Income Start-ing At 100%	HH A & B 150% ANNUAL Income Equal To Or Less Than 150%	HH Partial Premium Package C 175% ANNUAL Income Equal To Or Less Than 175%	USDA / WIC Standard 185% ANNUAL Income Equal To Or Less Than 185%	HH Full Premium Package C 200% ANNUAL Income Equal To Or Less Than 200%	CSHCS 250% ANNUAL Income Equal To Or Less Than 250%
1	$9,570	$14,355	$16,748	$17,705	$19,140	$23,925
2	$12,830	$19,245	$22,453	$23,736	$25,660	$32,075
3	$16,090	$24,135	$28,158	$29,767	$32,180	$40,225
4	$19,350	$29,025	$33,863	$35,798	$38,700	$48,375
5	$22,610	$33,915	$39,568	$41,829	$45,220	$56,525
6	$25,870	$38,805	$45,273	$47,860	$51,740	$64,675
7	$29,130	$43,695	$50,978	$53,891	$58,260	$72,825
8	$32,390	$48,585	$56,683	$59,922	$64,780	$80,975
9	$35,650	$53,475	$62,388	$65,953	$71,300	$89,125
10	$38,910	$58,365	$68,093	$71,984	$77,820	$97,275
11	$42,170	$63,255	$73,798	$78,015	$84,340	$105,425
12	$45,430	$68,145	$79,503	$84,046	$90,860	$113,575
Each additional member add	+ $3,260	+ $4,890	+ $5,705	+ $6,031	+ $6,520	+ $8,150
*MCH	<100% 0%	101%-150% **1 – 25%	151% 25%	to 185% to 50%	186% - 200% 50%	201% - 250% 75%

Base Poverty Level is: $798. Federal Register Vol. 70, No. 33, February 18, 2005

***MCH Percentage used to calculate MCH charges. If income is greater than 250%, charge 100%.**

****Clinic choice 1-24% for the cost of service except those covered by HH.**

DEPARTMENT OF STATE REVENUE

04970118.LOF

LETTER OF FINDINGS: 97-0118
Indiana Gross Retail Tax
For Tax Periods 1993 through 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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Retail Tax—Uncollectible Receivables ("Bad Debt") Deduction

Authority: IC 6-2.5-6-9; Chrysler Financial Co. v. Ind. Dept. of Revenue, 761 N.E.2d 909 (Ind. Tax Ct. 2002)

Taxpayer maintains it is entitled to a refund of sales tax paid on credit card transactions later found to be uncollectible.

II. Consumer Use Tax—Store Signage & Point-of-Sale Advertising

Authority: IC 6-2.5-3-2

Taxpayer protests a portion of the use tax assessments that were based on Taxpayer's use of store signage and point-of-sale advertising materials in its Indiana stores.

STATEMENT OF FACTS

Taxpayer operates a nationwide chain of retail stores. A number of these stores are located in Indiana. Taxpayer also is the parent company of a bank ("Bank"), a wholly owned subsidiary, which issues Taxpayer's proprietary credit cards.

Pursuant to a sales and use tax audit, the Indiana Department of State Revenue ("Department") proposed additional assessments of sales and use tax. Taxpayer has protested two of these assessments.

DISCUSSION

I. Gross Retail Tax—Uncollectible Receivables ("Bad Debt") Deduction

In addition to its retail activities, Taxpayer is the parent company of a national bank ("Bank"), a wholly owned subsidiary. The Bank issues Taxpayer's proprietary credit cards ("credit cards") to Taxpayer's customers ("customers"). Customers use these credit cards to purchase merchandise at Taxpayer's retail stores. Taxpayer describes its credit sales transactions as follows:

> Simultaneously with the exchange of merchandise between [Taxpayer] and the customer, [Bank] pays [Taxpayer] for all amounts due as a result of the sale. [Taxpayer] collects sales tax on these purchases…and…remits the tax to the Indiana Department of Revenue (Department). … A small percentage of these credit card receivables go uncollected and are written off by [Taxpayer] and taken as a deduction on [Taxpayer's] federal income tax return. [Taxpayer] has an agreement with [Bank] to accept [Bank] issued credit cards and [Taxpayer] also has an ongoing agreement with [Bank] allowing [Taxpayer] to take the bad debt write off amounts as a deduction on [Taxpayer's] Indiana sales tax returns for the above periods.

Audit disallowed the bad debt deduction taken by Taxpayer because the credit card receivables were assets of the Bank and not those of Taxpayer. According to Audit, since Taxpayer assigned its credit card receivables (non-recourse) to the Bank, it is the Bank, and not Taxpayer, that may qualify for a bad debt deduction for federal income tax purposes. Consequently, it is the Bank, and not Taxpayer, that may qualify for the bad debt deduction for Indiana sales tax purposes.

Taxpayer disagrees. Taxpayer contends the assignment of its credit card receivables to the Bank (and the derivative right to the bad debt deduction provided by IC 6-2.5-6-9) should not be a factor in determining which entity is entitled to the bad debt deduction. Taxpayer explains:

> Whether the bad debt is assigned to one party or the other in this case is irrelevant in determining the validity of the deductions since the retailer [Taxpayer] and the retailer's affiliated bank [Bank] file a consolidated federal income tax return and the bad debt is taken as a deduction on that consolidated return.

Analysis

The statute entitling a retail merchant to a sales tax deduction for uncollectible receivables (bad debt) provides:

> In determining the amount of state gross retail and use taxes which [] must [be] remit[ted]…a retail merchant shall deduct from his gross retail income from retail transactions made during a particular reporting period, an amount equal to his receivables which: (1) resulted from retail transactions in which the retail merchant did not collect the state gross retail or use tax from the purchaser; (2) resulted from retail transactions on which the retail merchant has previously paid the state gross retail or use tax liability to the department; and (3) were written off as an uncollectible debt for federal tax purposes during the particular reporting period.
>
> IC 6-2.5-6-9(a).

Indiana case law has extended the reach of IC 6-2.5-6-9 (the "Indiana bad debt deduction"). In addition to retail merchants, assignees also may qualify for this deduction. In Chrysler Financial Co. v. Ind. Dept. of Revenue, 761 N.E.2d 909 (Ind. Tax Ct. 2002), the Indiana Tax Court found that when a retail merchant assigns without recourse an installment contract to a financial

institution, the financial institution—as assignee—is entitled to claim the derivative Indiana bad debt deduction.

Taxpayer asks the Department to extend the reach of the bad debt deduction further. Taxpayer insists that once an assigned account receivable has "ripened" into a bad debt for federal income taxpayers, the original assignee (Bank) may re-assign its right to the Indiana bad debt deduction to a related third party—in this instance, to the original assignor (Taxpayer). Taxpayer is mistaken. The original assignee (Bank) may not re-assign its rights to the Indiana bad debt deduction to third parties—related or otherwise.

The assignment of credit card receivables without recourse must be distinguished from the assignment of an Indiana bad debt deduction. In Chrysler, Indiana Chrysler Dealers (Dealers) assigned without recourse "all rights, title, and interest" in their consumer installment contracts to Chrysler Financial (Chrysler). Chrysler at 911. "As consideration for the assignment, Chrysler paid the Dealers all amounts due under the contracts, including the sales tax." Id. At the time of assignment, no bad debt for federal income tax purposes existed; consequently, neither the assignor nor assignee could have claimed or taken an Indiana bad debt deduction. The Dealers did not assign a bad debt. The Dealers did not assign a bad debt deduction. Rather, the Dealers assigned installment contracts. The Dealers assigned "all rights, title, and interest in the contracts without recourse" to Chrysler. Id. Among the rights assigned included the conditional right to an Indiana bad debt deduction.

In effect, Taxpayer argues the Indiana legislature, in drafting IC 6-2.5-6-9, intended to create a transferable refundable "bad debt" sales tax credit. Again, Taxpayer is mistaken.

According to IC 6-2.5-6-9, the amount that may be deducted as bad debt for Indiana sales tax purposes is limited to the amount of receivables "written off as [] uncollectible debt for federal [income] tax purposes…." IC 6-2.5-6-9(a)(3). The latter is a condition precedent to the former.

In Chrysler, the Indiana Tax Court found that a Dealer may assign its rights to the bad debt deduction. Chrysler at 913. However, from the Court's perspective, Chrysler's right (as assignee) to the bad debt deduction was dependent upon the Dealers' prior assignment of installment contracts to Chrysler. See Chrysler at 913, FN 9. That is, the right to the bad debt deduction *derived from* the assignment of the installment sales contracts. Without the latter, there could be no former.

Taxpayer attempts to detach the realization of bad debt for federal income tax purposes from the recognition of bad debt for Indiana sales tax purposes. This contravenes the language of IC 6-2.5-6-9. Taxpayer attempts to divorce the Indiana sales tax bad debt deduction from the debt instrument itself. This extension of the Tax Court's Chrysler holding is inconsistent with the Tax Court's reasoning. Indiana tax law sanctions neither proposition.

FINDING

For the aforementioned reasons, Taxpayer's protest is denied.

II. Consumer Use Tax—Store Signage & Point-of-Sale Advertising

Taxpayer purchased store signage and Point-of-Sale ("POS") advertising materials. These items were used in Taxpayer's stores nationwide—including Taxpayer's Indiana stores. Taxpayer paid neither sales nor use tax on many of these items. Consequently, the Audit Division of the Indiana Department of State Revenue ("Audit"), pursuant to IC 6-2.5-3-2, proposed additional assessments of consumer use tax ("use tax").

Due to the number of items involved, Audit used a sampling method to compute the additional assessments. Initially, Audit determined an error percentage from which an estimate of the taxable purchases per store (nationwide) was computed. Audit then multiplied this estimated amount per store by the number of Taxpayer's stores located in Indiana. This product represented the taxable value of store signage and POS advertising materials used in Indiana ("Total Value"). Audit computed the use tax due by multiplying the Total Value by the applicable use tax rate (.05).

Taxpayer agrees with the sampling method used by Audit. However, Taxpayer disagrees with a small portion of the use tax assessments proposed by Audit. Taxpayer explains:

> This protest is due to a computation error in calculating the use tax due of POS signage. The number of stores located in Indiana at each year was overstated.

Taxpayer has provided evidence showing that several of its Indiana stores ceased doing business during the audit period. However, the ***Indiana*** use tax assessments at issue were based on an estimate of the taxable purchases per store ***nationwide***. A decrease in the number of Taxpayer's ***Indiana*** stores does not, without more, lead to the conclusion that the proposed Indiana use tax assessments were overstated. If Taxpayer also experienced a proportional decrease in the number of stores ***nationwide***, the Indiana use tax assessments at issue would remain unchanged.

Taxpayer has failed to provide the Department with sufficient information for the Department to revisit the taxable-purchases-per-store calculus and the resultant Indiana use tax assessments.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

01980154.LOF
0220000275.LOF
04980091.LOF

LETTER OF FINDINGS NUMBER: 98-0091, 98-0154, 00-0275
Individual Income Tax
For the Years 1994 and 1995
Corporate Income Tax
For the Years 1991, 1992, 1993, 1994, and 1995
Sales and Use Tax
For the 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.

ISSUE

I. Sales and Use Tax—Sales to out-of-state residents who picked up the merchandise in Indiana

Authority: IC 6-8.1-5-1(b); IC 6-2.5-2-1; IC 6-2.5-9-3; 45 IAC 2.2-5-54.

Taxpayer protests the assessment of sales tax on sales made to Kentucky customers who picked up the merchandise at Taxpayer's Indiana location.

II. Sales and Use Tax—Unreported cash sales unsubstantiated by records

Authority: IC 6-8.1-5-1(b); IC 6-8.1-5-4; IC 6-8.1-5-1(a).

Taxpayer protests the assessment of sales tax due on unreported cash sales and the Department's calculation of that amount of sales tax due.

III. Corporate Income Tax—Unreported Cash Sales

Authority: IC 6-3-4-1(3); 45 IAC 3.1-1-67.

Taxpayer protests the assessment of additional income based on unreported cash sales.

IV. Individual Income Tax—Unreported Cash Sales

Authority: IC 6-3-4-1(1).

Taxpayer protests the over-recognition of pass-through income from S-corporation.

STATEMENT OF FACTS

Taxpayer operates a retail store in Indiana. Sales are made over-the-counter, by delivery, and by shipment in interstate commerce using UPS. Some Kentucky customers bought and picked up merchandise at Taxpayer's Indiana retail store. Taxpayer had registered with Kentucky as a retail merchant and was collecting and remitting sales tax to Kentucky on these Kentucky customers. The Department assessed Indiana sales tax on these sales. Taxpayer insisted these sales were exempt as sales in interstate commerce.

Taxpayer sold merchandise across-the-counter at its Indiana retail store. These are termed "cash sales." The sales were recorded on hand-written sales tickets that were not pre-numbered. These sales were rung on the cash register—which kept a tape. At the end of the day, the sales were zeroed out. Taxpayer kept the revenues in a safe and made bank deposits on a sporadic basis—varying from weekly to monthly to quarterly. The deposits were not the true amount of revenues generated by sales because Taxpayer made payouts from the register and spent money from the safe. This fact was stated by a former bookkeeper employed by Taxpayer. Taxpayer had destroyed the hand-written sales tickets and the cash register tapes for the audit period, possibly by shredding the records. The Department estimated sales by taking an average of sales made during a two-month post-assessment sample period. Taxpayer knew an active sample was being conducted—yet the hand-written sales tickets and register tapes for the sample were destroyed. The Department, using the summary tape from the register, calculated the average sales amount to be $17.57. The Department then multiplied this average by the number of sales tickets that had been used. Taxpayer had purchased a supply of sales tickets from a local printer. The Department subtracted 600 special order sales tickets it already had reviewed. Taxpayer is protesting the Department's calculation of the number of sale tickets used. Taxpayer has agreed to the average sale amount of $17.57.

The assessment of additional sales tax due triggered an increase in the amount of revenue generated by Taxpayer's business. The Department adjusted Taxpayer's corporate income tax return and Taxpayer's individual income tax return.

I. Sales and Use Tax—Sales to out-of-state residents who picked up the merchandise in Indiana

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). IC 6-2.5-2-1 imposes a sales tax on retail transactions made in Indiana. A person who acquires property in a retail transaction conducted in Indiana is liable for the sales tax and is required to pay it to the retail merchant. *Id*. The retail merchant is

required to collect the tax as an agent for the state. *Id*. If a retail merchant fails to collect or remit sales tax, the merchant and/or the responsible officers personally are liable to pay the sales tax it had a duty to collect. IC 6-2.5-9-3. 45 IAC 2.2-5-54 states that sales of tangible personal property delivered in Indiana to a purchaser are subject to sales tax.

Taxpayer had a duty to collect and remit sales tax for over-the-counter sales made to customers from Kentucky who physically purchased and picked up their merchandise at Taxpayer's Indiana retail store. Taxpayer's contradictory arguments are not relevant. Taxpayer claimed it collected and remitted sales tax to Kentucky. Taxpayer alternatively argued that the over-the-counter sales to purchasers from Kentucky were exempt from sales tax because they were made in interstate commerce. The statutes and regulation cited above are clear—Taxpayer had a duty to collect and remit sales tax to Indiana for sales made and delivered in Indiana.

FINDING

For the reasons named above, Taxpayer's protest is denied.

II. Sales and Use Tax—Unreported cash sales unsubstantiated by records

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). IC 6-8.1-5-4 affirmatively requires a taxpayer to keep books and records so that the Department can review the documents to determine the amount of a taxpayer's liability for applicable taxes. The records required to be maintained include invoices, register tapes, receipts, and canceled checks. *Id*. Taxpayer created these documents; yet it affirmatively destroyed these records. If the Department reasonably believes that a taxpayer has not reported the proper amount of tax due, IC 6-8.1-5-1(a) mandates the Department to make a proposed assessment of the amount of unpaid tax on the basis of the best information available to the Department.

Despite the fact that Taxpayer had not maintained the records to substantiate cash sales for 1994, 1995, and 1996, the auditor attempted to compensate for this by estimating sales based on a sample period. Because Taxpayer and the Department agreed on a two-month post-assessment sample period, Taxpayer was on notice that an attempt to estimate sales amounts and sales volumes was being created. Taxpayer confirmed to the Department that it would maintain records so that these calculations could be made. Yet Taxpayer chose to destroy these records. Having done so, the Department made a best estimate of the average sales amount and the number of sales with the information it had available. Taxpayer has agreed that $17.57 is the average sale amount. At issue is the number of sales. The Department based the number of sales on the number of sales tickets purchased and used. Subtracting the 600 sales that the Department could substantiate, that leaves the remainder of the sales tickets for which there has been no accounting. Taxpayer has stated that the sales tickets were used for phone messages and for other general purposes. However, this statement requires a substantiation of the number of tickets used for sales and the number not used for sales. Barring positive evidence to rebut the use of the sales tickets for purposes other than sales, the Department's computation of the number of sales tickets used is the best information available to the Department.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

III. Corporate Income Tax—Unreported Cash Sales

DISCUSSION

The assessment of additional sales tax due based on the calculation of unreported cash sales triggers an increase in the revenues earned by Taxpayer. Taxpayer's business is incorporated as an S-corporation. IC 6-3-4-1(3) requires all corporations with gross income from an Indiana source to file an income tax return. 45 IAC 3.1-1-67 requires an S-corporation to file an IT-20S. Annual returns must be filed by S-corporations incorporated in Indiana or having income from Indiana sources. *Id*. Since the Department assessed unreported cash sales and since the Department upheld the sales tax assessment on those sales, the revenue is reportable for corporate income tax purposes.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

IV. Individual Income Tax—Unreported Cash Sales

DISCUSSION

Income earned by an S-corporation is passed through to the shareholders to be taxed on their individual income tax returns. Taxpayer's business is incorporated as an S-corporation, which means that the income earned by an S-corporation is considered to be income earned by the shareholders. IC 6-3-4-1(1) requires each Indiana resident to file an annual individual income tax return. Since the Department assessed unreported cash sales and since the Department upheld the sales tax assessment on those sales, the revenue is reportable for individual income tax purposes.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

04990617.LOF

LETTER OF FINDINGS NUMBER: 99-0617
SALES TAX
For Years 1996, 1997, and 1998

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. Sales and Use Tax—Assessment of Use Tax on Lump-sum contracts

Authority: IC 6-8.1-5-1(b); IC 6-8.1-5-4; IC 6-8.1-5-1(a).

Taxpayer protests the 75% proportioning of sales to Indiana sources.

STATEMENT OF FACTS

Taxpayer does landscape architecture, then installs the plant and construction materials. Taxpayer provided no sales invoices or journals to the Department. Until April 1999, Taxpayer was not registered to collect Indiana sales tax. Since Taxpayer is a landscaper/contractor who failed to provide documentation, the auditor for the Department took the position that Taxpayer billed on a lump-sum basis. Billing on a lump sum basis would not have required Taxpayer to collect sales tax from the customer.

Accepting this required that use tax be determined and assessed on the materials provided to the customer. No purchase invoices were available, so the Department conducted a corporate income tax audit and determined Indiana gross receipts to be 75% of Taxpayer's revenues. Thus, 75% of the cost of goods sold were portioned to Indiana as taxable purchases. The cost of goods calculation did not include labor.

Taxpayer protested the assessment proportioning and filed a protest. The Department attempted to contact Taxpayer by mail for over one year to resolve the file, but all mail sent to Taxpayer was returned as undeliverable. Two separate addresses were used in an attempt to correspond with Taxpayer. The Department undertook a simple query of telephone listings of Taxpayer's name in an attempt to find a current address, but Taxpayer's name was not listed. This Letter of Finding was written based on the information available in the file.

I. Sales and Use Tax—Assessment of Use Tax on Lump-sum contracts

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). IC 6-8.1-5-4 affirmatively requires a taxpayer to keep books and records so that the Department can review the documents to determine the amount of a taxpayer's liability for applicable taxes. The records required to be maintained include invoices, register tapes, receipts, and canceled checks. *Id*. Documentation was not made available to the Department. If the Department reasonably believes that a taxpayer has not reported the proper amount of tax due, IC 6-8.1-5-1(a) mandates the Department to make a proposed assessment of the amount of unpaid tax on the basis of the best information available to the Department.

Because of the nature of Taxpayer's business, the Department determined that the lump-sum contract method best represents the information needed to determine Taxpayer's tax liabilities. As well, the Department proportioned the Indiana contracts based on Taxpayer's corporate income tax return. Taxpayer did not present any documentation to rebut the Department's assessment; therefore, the assessment stands as determined.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420010247.LOF

LETTER OF FINDINGS NUMBER: 01-0247
Sales and Withholding Tax
Responsible Officer
For the Tax Period 1993-2003

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

1. Sales and Withholding Tax-Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-8.1-5-1(b), IC 6-3-4-8(f).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales and withholding taxes.

STATEMENT OF FACTS

The taxpayer was an officer of a corporation that did not properly remit sales taxes and withholding taxes to the state during the tax period 1993-2003. The Indiana Department of Revenue, hereinafter referred to as the "department," assessed the unpaid sales taxes, withholding taxes, interest, and penalty against the taxpayer as a responsible officer of that corporation. The taxpayer protested the assessment of tax. A hearing was held and this Letter of Findings results.

1. Sales and Use Tax and Withholding Tax-Responsible Officer Liability

DISCUSSION

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. IC 6-8-1-5-1(b).

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

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.

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides that "In 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."

The taxpayer contended that he discovered two mistakes with the department's assessments. The taxpayer provided substantial documentation to support this contention. First, the taxpayer showed that the sales tax liability for one month had actually been paid. Another month's tax liability was actually listed under two liability numbers. Since each month's tax liability need only be paid once, the duplicate liability must be deleted from the total assessment.

The taxpayer agrees that he was a responsible officer from the time the corporation was formed until the time he resigned his office and sold his interest in the corporation. The taxpayer provided substantial documentation that he did actually completely sever himself from association with the corporation on August 9, 1997. Therefore, he is not responsible for any liabilities due after August 9, 1997.

FINDING

The taxpayer's protest is sustained as to the duplicated liability, the paid liability and the liabilities due after August 9, 1997. The taxpayer owes the remainder of the assessment, interest, and penalty.

DEPARTMENT OF STATE REVENUE

0420030084.LOF

LETTER OF FINDINGS NUMBERS: 03-0084
Gross Retail and Use Taxes
For 2001

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. Gross Retail and Use Taxes—Tractor

Authority: IC § 6-8.1-5-1(b); IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-7; 45 IAC 15-5-3(8); 45 IAC 2.2-2-1; 45 IAC 2.2-3-4

Taxpayers protest the proposed assessment of Indiana use tax on the purchase of a John Deere tractor, which they returned to the dealer approximately three months after purchase. They received back all but $250.00 of the purchase price.

STATEMENT OF FACTS

Taxpayers own two adjacent parcels of land totaling approximately 200-plus acres. The family home and taxpayers' operated convenience store are located on the land; taxpayers farm the remainder. A use tax issue arose during the audit when the auditor declined to accept the evidence supplied showing that taxpayers had returned a John Deere tractor to the dealership approximately

three months after purchase, and received all but $250.00 back in a refund. Additional facts will be added as necessary.

I. Gross Retail and Use Taxes—Tractor

DISCUSSION

Pursuant to IC § 6-8.1-5-1(b) and 45 IAC 15-5-3(8), 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 assessment is made."

Pursuant to IC § 6-2.5-2-1, a "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." *See also*, 45 IAC 2.2-2-1. Pursuant to IC §§ 6-2.5-3-1 through 6-2.5-3-7, an "excise tax, known as the use tax, if imposed on the storage, use, or consumption of tangible personal property in Indiana is the property was acquired in a retail transaction." An exemption is provided in IC § 6-2.5-3-4 if "the property was acquired in a retail transaction and the state gross retail tax" was paid at the time of purchase. Taxpayers are personally liable for the tax. (IC § 6-2.5-3-6). IC § 6-2.5-3-7 provides that a "person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for storage, use, or consumption in Indiana;" therefore, the presumption of taxability exists until rebutted. *See also*, 45 IAC 2.2-3-4.

The Department has revisited the use tax assessment on a John Deere tractor taxpayer returned to the dealership approximately three months after purchase, where taxpayer received all but $250.00 in a refund. The auditor decided the evidence was insufficient, especially because taxpayers did not receive a full refund. However, since a companion Letter of Findings has concluded that taxpayers agricultural activities entitled them to deduct losses because they were engaged in the business of farming, any use of the tractor for taxpayers' farming activities would render the purchase and use of the tractor exempt. There is nothing in the file to indicate the tractor was used for any other purposes. It is immaterial that taxpayers received less than a full refund for the tractor's return to the seller.

FINDING

Taxpayers' protest concerning the imposition of additional use tax for a tractor returned to the dealer is granted.

DEPARTMENT OF STATE REVENUE

0120030086.LOF

LETTER OF FINDINGS NUMBER: 03-0086
Adjusted Gross Income Tax
For Years 1999, 2000, 2001

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. Adjusted Gross Income Tax—Agricultural losses

Authority: IC § 6-8.1-5-1(b); IC § 6-3-1-3.5; 45 IAC 15-5-3(8); 45 IAC 3.1-1-1 through 45 IAC 3.1-1-5 26 U.S.C. § 62; 26 U.S.C. § 165; 26 U.S.C. § 183

Taxpayers protest the denial of deductions from their adjusted gross income tax based on agricultural losses that the auditor decided were from a "hobby," not a business engaged in for profit.

STATEMENT OF FACTS

Taxpayers own two adjacent parcels of land totaling approximately 200-plus acres. The family home and taxpayers' operated convenience store are located on the land; taxpayers farm the remainder. Taxpayers suffered losses during the audit years at issue, which the auditor disallowed as deductions from taxpayers' individual income taxes. The auditor's rationale for disallowing the deductions was that taxpayers operated the farm as a "hobby." Additional facts will be added as necessary.

I. Individual Income Tax—Agricultural losses

DISCUSSION

Taxpayer protests the disallowance of deductions from adjusted gross income tax based on agricultural losses. The auditor's rationale for denying the deductions was based on the determination that taxpayers operated a "hobby" farm. In reality, the farmed acreage was devoted to the growing and selling of corn and soybeans for profit, as evidenced by documents taxpayer produced after the hearing.

Pursuant to IC § 6-8.1-5-1(b) and 45 IAC 15-5-3(8), 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 assessment is made."

The standards for sustaining a claim for deductions from adjusted gross income tax because of agricultural losses can be found at IC § 6-3-1-3.5 and 45 IAC 3.1-1-1 through 45 IAC 3.1-1-1-5. IC § 6-3-1-3.5 defines individual adjusted gross income tax in terms of Section 62 of the Internal Revenue Code, "modified as follows." Section 62 begins with an individual's gross income tax "minus the following deductions." So, in order to arrive at an individual's Indiana income tax liability, the Department looks at the federal adjusted gross income (gross income minus allowable deductions) and then modifies that figure according to IC § 6-3-1-3.5(a). One of the deductions allowable under the federal scheme is losses from the sale of property (section 62(a)(3)) which references sections 161 *et seq*. Section 161 provides that "there shall be allowed as deductions the items specified in this part," i.e., Part VI. Section 165 allows deductions for losses "incurred in any transaction entered into for profit;" (165(c)(2)); section 167 allows deductions for depreciation of property used in a trade or business. Taxpayers ascribe their loss deductions as depreciation and interest, claiming that their income from their agricultural activities will rise as the depreciation and interest deductions lessen over time.

The auditor disallowed the deductions, arguing that since taxpayers operated the farm as a "hobby" and not for profit under section 165(c)(2) and section 183, taxpayers were not entitled to the deductions under Indiana's tax laws. Section 183 disallows deductions for activities not engaged in for profit. Section 183(d) creates a presumption that if income exceeds deductions for three of five consecutive years, then the activity is engaged in for profit. The auditor applied section 183(d) in order to characterize taxpayers' agricultural activities as a hobby because it showed no profit yet. It should be noted that taxpayers entered the acreage at issue into a federal conservation reserve plan, qualified, and received payments from the federal government in 1999, 2000, and 2001 for growing certain crops.

The Department finds that taxpayers have provided sufficient evidence to show that they are entitled to the deductions at issue.

FINDING

Taxpayers' protest concerning the audit's disallowance of deductions from adjusted gross income tax, based on agricultural losses, is granted.

DEPARTMENT OF STATE REVENUE

0420030097.LOF

LETTER OF FINDINGS: 03-0097
Sales and Use Tax
For 1999, 2000, and 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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Personal Use of Rental Vehicle – Use Tax.

Authority: IC 6-2.5-2-1; IC 6-2.5-5-1 to 70; IC 6-2.5-5-8; 45 IAC 2.2-3-15; Tax Policy Directive 8 (Jan. 2003).

Taxpayer argues that the audit erred when it assessed use tax on automobiles which were purchased for renting to its retail customers.

II. Purchase of Advertising Materials – Use Tax.

Authority: IC 6-2.5-1-1; IC 6-2.5-1-2; IC 6-2.5-3-2(a); 45 IAC 2.2-4-1.

Taxpayer states that the audit improperly assessed use tax on the purchase of advertising materials. Taxpayer claims that a portion of the original purchase price included the cost of exempt services and the cost of exempt postage.

STATEMENT OF FACTS

Taxpayer is in the business of renting automobiles on a short-term basis. Taxpayer operates its business at locations within the state and at locations outside the state. Taxpayer also operates several retail locations which sell or lease used cars and trucks.

The Department of Revenue (Department) conducted an audit review of taxpayer's business and tax records and determined that taxpayer owed additional use tax. Taxpayer disagreed with certain of the audit's conclusions and submitted a protest to that effect. An administrative hearing was conducted during which taxpayer further explained the basis for its protest. This Letter of Findings results.

DISCUSSION

I. Personal Use of Rental Vehicle – Use Tax.

Taxpayer bought automobiles intended for use in its car rental business. When taxpayer bought these vehicles, it did not pay sales tax because the vehicles were intended for use in an exempt manner. The audit found that taxpayer permitted certain of its employees to use the vehicles for personal reasons and concluded that the vehicles were being used – in part – for a non-exempt

purpose. Therefore, the audit concluded that taxpayer owed use tax to the extent that the vehicles were being used for this non-exempt purpose.

Taxpayer buys cars directly from the manufacturer and keeps the cars for approximately four to six months. At the end of that time, taxpayer returns the cars to the manufacturer pursuant to the terms of the parties' "buy-back" arrangement. Depending on the particular type of rental vehicle, the cars have individually accumulated approximately 30,000 to 40,000 miles by the time the cars are eventually returned to the manufacturer.

Taxpayer admits that its employees use the vehicles for personal reasons and describes its policy of permitting employees to use the vehicles as follows: Approximately 10 to 14 of its mid-level management personnel are permitted to borrow vehicles. These employees are permitted to borrow vehicles which have not been rented by the end of the business day. The employees are allowed to keep the car until the next workday.

Taxpayer argues that employee use of the rental vehicles is minimal. Taxpayer estimates that of the 30,000 to 40,000 miles which accumulate during the average time it retains each vehicle, only about.2% of the mileage is attributable to employees' private use. It is taxpayer's contention that employee use of the vehicles does not impact its sales/use tax liability because non-exempt use of a vehicle is only permitted when the vehicle has not been rented to a paying customer by the end of each business day. In other words, allowing employees to use the vehicles does not affect the amount of sales tax taxpayer would be collecting from its paying customers.

The audit employed a method for calculating use tax liability based upon the Department's Tax Policy Directive 8 (Jan. 2003), entitled "Application of Sales and Use Tax to Demonstrator Automobiles." The Policy Directive suggests imposing use tax "at the rate to twenty (20) cents per mile times the Indiana sales tax rate." Alternatively, the Directive suggests that the "dealer may elect to report the use tax on two (2) percent of the dealer's cost of purchasing the vehicle...." Although the Directive relates to "Demonstrator Automobiles" and not to rental vehicles, taxpayer has no quarrel with the methodology chosen by the audit; taxpayer does maintain that the underlying rationale for imposing the tax is flawed.

Indiana imposes a gross retail (sales) tax on retail transactions in Indiana. IC 6-2.5-2-1. The legislature has provided a number of exemptions to the imposition of that tax. *See* IC 6-2.5-5-1 to 70. One of those exemptions is provided at IC 6-2.5-5-8 which states that, "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."

Taxpayer is entitled to obtain its cars without paying sales tax because it is in the business of leasing automobiles. However, 45 IAC 2.2-3-15 states that use tax may be imposed under certain circumstances.

> If any person who issues an exemption certificate in respect to the state gross retail tax or use tax and thereafter makes any use of the tangible personal property covered by such certificate, or in any way consumes, stores, or sells such tangible personal property, where such use, consumption, storage or sale is in a manner which is not permitted by such exemption, such use, consumption, or storage shall become subject to the use tax (or such sale shall become subject to the gross retail tax), and such person shall become liable for the tax or gross retail tax thereon.

Taxpayer was entitled to purchase its cars without paying sales tax because it bought the cars for use in its auto rental business. However, to the extent that taxpayer permitted its employees to use the cars in a non-exempt (non-rental) manner, taxpayer became subject to use tax measured by the extent of that non-exempt use. The Department accepts taxpayer's contention that its policy of allowing employees occasional use of the rental car does not affect the amount of sales tax it collects from its paying customers. However, the Department is unable to accept the corollary argument that the state's gross retail tax is calculated by balancing the equities between potential sales and potential use tax liability. Taxpayer's sales tax liability is based upon its "sales" which consists of the amount of money taxpayer receives when it rents its vehicles. The amount of sales tax liability will vary from vehicle to vehicle and from month to month, but sales tax is not measured by the way in which the car is used or by the value of the particular vehicle. On the other hand, the state's use tax is measured by the way in which the car is "used" by the purchaser. If the vehicle is used in an exempt manner, there is no taxable use. If the vehicle is used in a non-exempt manner, then use tax liability accrues. Although the scenario is not likely, taxpayer could purchase a $30,000 car for its business, never succeed in renting the vehicle, never collect sales tax from a single customer, and never use the vehicle in a non-exempt fashion. If there were no sales (rentals) and no non-exempt use, there would be no sale or use tax liability; the state could not – in a subsequent audit – afterwards claim that it had to collect either sales or use tax.

FINDING

Taxpayer's protest is respectfully denied.

II. Purchase of Advertising Materials – Use Tax.

Taxpayer hired an out-of-state company to prepare and mail advertising materials to a listing of customers provided by taxpayer. The out-of-state company originally invoiced taxpayer a single charge for the cost of each order of completed and delivered materials. The audit found that taxpayer owed use tax based upon the price it paid for these materials. Taxpayer has subsequently provided information prepared by the out-of-state company detailing the costs involved in the preparation and delivery of the advertising materials. Those detailed costs specify the price charged for materials, labor, and postage. Taxpayer's contends that it only owes use

tax on the price of the materials and that the amount of use tax should be reduced.

IC 6-2.5-3-2(a) states that "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 the transaction."

In effect, the audit found that taxpayer's purchase of advertising materials constituted a "unitary transaction" under 45 IAC 2.2-4-1. This regulation states as follow:

(a) Where ownership of tangible personal property is transferred for a consideration, it will be considered a transaction of a retail merchant constituting selling at retail unless the seller is not acting as a "retail merchant."

(b) All elements of consideration are included in gross retail income subject to tax. Elements of consideration include, but are not limited to:

(1) The price arrived at between purchaser and seller.

(2) Any additional bona fide charges added to or included in such price for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other services performed in respect to or labor charges for work done with respect to such property prior to transfer.

(3) No deduction from gross receipts is permitted for services performed or work done on behalf of the seller prior to the transfer of such property at retail.

The regulation derives from IC 6-2.5-1-1 which states that a "'unitary transaction' includes all items of personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated." A "retail unitary transaction" occurs when a retail merchant purchases tangible personal property in his ordinary course of business and then sells that property along with services as a unitary transaction. IC 6-2.5-1-2.

The audit was correct in concluding that taxpayer bought the advertising materials by means of a unitary transaction. There is no evidence that taxpayer negotiated for or purchased the out-of-state company's labor or delivery services separately from the cost of the materials. Taxpayer wanted advertising materials, taxpayer bought advertising materials, and taxpayer paid for advertising materials. The fact that the supplier can now supply detailed information breaking down the original invoice charges does not affect the nature or taxability of the original transaction. Taxpayer did not negotiate or pay for the supplier's services; it did not negotiate or pay for postage stamps. Taxpayer bought advertising materials in a series of unitary transactions, and it owes use tax on those unitary transactions.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

02-20030114.LOF
02-20030115.LOF
02-20030130.LOF

LETTER OF FINDINGS NUMBERS: 03-0114, 03-0115, 03-0130
Gross Income Tax
For the Years 1999, 2000, 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

I. Gross Income Tax-Imposition

Authority: IC 6-8.1-5-1(b), IC 6-2.1-2-2, 45 IAC 1.1-6-2, *First National Leasing and Financial Corp. v. Indiana Department of Revenue*, 598 N.E.2d 640, (Ind. Tax 1992).

The taxpayer protests the imposition of gross income tax on income from certain leases.

STATEMENT OF FACTS

Taxpayer is a business engaged in the leasing of computer hardware and other technological equipment. Taxpayer's offices are located in another state, and Taxpayer does not maintain an office or personnel in Indiana. The property that Taxpayer leases is subject to a security interest in the state in which it is located and notification in the event it is moved to another state; however, Taxpayer does not control the location of the property with very minor exceptions. As a result of Department audit, Taxpayer was assessed gross income tax with respect to its income from leases located in Indiana. Taxpayer protested the assessment, and this Letter of Findings results.

I. Gross Income Tax-Imposition

DISCUSSION

All tax assessments are presumed to be accurate and taxpayers bear the burden of proving that any assessment is incorrect. IC 6-8.1-5-1(b).

Indiana imposes a gross income tax on the "taxable gross income derived from activities or businesses or any other sources within Indiana" of a nonresident taxpayer. IC 6-2.1-2-2. The Department assessed gross income tax on the taxpayer's income from leases of computers and technological equipment in Indiana. Taxpayer contended that its lease income was not derived from an Indiana source and therefore not subject to the Indiana gross income tax. The issue to be determined in this case is whether Taxpayer's lease income was actually derived from an Indiana source and was therefore subject to the Indiana gross income tax.

The gross income tax law concerning the taxability of income from intangibles such as the taxpayer's leases is clarified at 45 IAC 1.1-6-2 as follows:

(b) Except as provided in subsection (c), receipts derived from an intangible are included in gross income.

(c) Receipts derived from an intangible are not included in gross income under the following situations:

(1) The intangible forms an integral part of:

(A) a trade or business situated and regularly carried on at a business situs outside Indiana; or

(B) activities incident to such trade or business.

(2) The intangible does not form an integral part of a trade or business situated and regularly carried on at a business situs in Indiana, and the taxpayer's commercial domicile is located outside of Indiana.

(3) The receipts from the intangible are otherwise excluded from gross income under IC 6-2.1-1-2 or 45 IAC 1.1-3-3(c)(7).

(d) In determining whether an intangible forms an integral part of a trade or business or activities incident thereto under subsection (c) it is the connection of the intangible itself to such trade or business or activities incident thereto that is the controlling factor. The physical location of the evidence of the intangible (share of stock, bond, etc.) is not a controlling factor. Also, any activities related to the sale of an intangible occur after the fact and are never determinative.

(e) As used in this section, "commercial domicile" means the nerve center of the taxpayer where a majority of the activities and functions of the business are performed. The department will include the following types of activities in making a determination of commercial domicile.

(1) The location of management and administrative activities connected with each location, such as policy and investment decisions.

(2) The location of meetings of the board of directors.

(3) The residence of executives and their offices.

(4) The location of books and records.

(5) The location of payment on income from intangibles of the taxpayer.

(6) The information from annual and quarterly reports of the taxpayer.

The Indiana Tax Court also dealt with the issue of the gross income taxability of a nonresident taxpayer's receipts from leases in *First National Leasing and Financial Corp. v. Indiana Department of Revenue*, 598 N.E.2d 640, (Ind. Tax 1992). In that case, First National leased equipment to another corporation which used the equipment in its train derailment business. The Court set out a three part inquiry for analyzing whether or not gross income from an intangible is subject to Indiana gross income tax. First the income must be gross income. Secondly the gross income must be derived from sources within Indiana. Finally the gross income that is derived from sources within Indiana must be subject to the Indiana gross income tax. In the first step of the analysis, the Court determined that First National actually received gross income from the leases of property used in Indiana. The Court next analyzed whether the gross income was derived from activities in Indiana. The leased equipment included several mobile items such as big over-the-road trucks, tractors, lowboy trailers, pick-up trucks, cranes, miscellaneous generators, light plants, and caterpillar tractors with side booms for lifting. *Id.* at 642. That equipment was stored and used a portion of the time in Indiana. First National did not have control over the equipment nor did it know where the equipment was actually located at any particular time. All commercial activities such as negotiations and signing of documents related to the lease agreements took place outside Indiana. *Id.* at 645. The Court determined that First National's lease income was derived from sources outside of Indiana. Therefore the income was not subject to the Indiana gross income tax.

Taxpayer concedes that the lease income is gross income within Indiana's gross income tax statute, satisfying the first part of the analysis.

The taxpayer's offices, administrative personnel, administrative services, board of directors, and books and records were all outside of Indiana. The taxpayer's lease income derives from leases that were negotiated, executed, and maintained outside of Indiana.

The taxpayer contends that its lease income was identical to the non taxable income of First National. Taxpayer's argument is persuasive with respect to the property in question. The gross income received from the leases of the property in question is not derived from Indiana activities.

FINDING

The taxpayer's protest to the gross income tax is sustained.

DEPARTMENT OF STATE REVENUE

0120030243.LOF

LETTER OF FINDINGS NUMBER: 03-0243
Individual Income Tax
For the Years 1997, 1998, 1999, 2000, and 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

I. **Individual Income Tax—Assessment**

Authority: IC 6-8.1-5-1(b); IC 6-3-2-1(a); IC 6-3-4-1; IC 6-3-6-10; IC 6-8.1-5-1(a); IC 6-8.1-4-2(a)(6).

Taxpayer protests the assessment of Indiana individual income tax.

STATEMENT OF FACTS

Taxpayer operates a business. The Department audited Taxpayer and found that he had not filed returns. Repeated attempts were made to obtain information from Taxpayer, but none was provided. An audit was completed using the best information available. Estimates were made by projecting income, based on Taxpayer's 1996 IT-40 and his 1996 and 1997 W-2s. Taxpayer's last IT-40 return was filed for 1996. Taxpayer protested the assessment and a hearing was held.

I. **Individual Income Tax—Assessment**

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). IC 6-3-2-1(a) imposes a tax each year on the adjusted gross income of every resident of Indiana. Each resident and taxpayer who has taxable Indiana income is required to file an Indiana income tax return. *See* IC 6-3-4-1. IC 6-3-6-10 requires taxpayers to keep and preserve records; these records are to be made available for inspection by the Department. If the Department reasonably believes that a person has not reported the proper amount of tax due, the Department is required to issue a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the Department. IC 6-8.1-5-1(a).

Taxpayer has been afforded ample opportunities to present coherent evidence to rebut the Department's assessment. The audit report notes that repeated attempts were made to obtain information, but none was provided. This indicates that Taxpayer chooses not to actively rebut the assessment. An auditor for the Department is granted the power to use projections and estimates in lieu of actual figures, if such figures are not available for audit examination. *See* IC 6-8.1-4-2(a)(6).

The hearing officer for the Department has actively worked with Taxpayer in an attempt to encourage and permit Taxpayer to submit documentation to rebut the assessment. The hearing originally set for October 5, 2004 was rescheduled at Taxpayer's request so that he could have the opportunity to complete the tax forms for the years in question. At the hearing on December 7, 2004, Taxpayer submitted returns for 1997, 1998, and 1999. But Taxpayer did not submit returns for 2000 and 2001. The hearing officer set the date of December 29, 2004 for the submission of the returns for 2000 and 2001. This date was mutually agreed upon by the Department and Taxpayer. Taxpayer also was asked to submit transcripts of his federal returns so that the Department could verify the income claimed. The 2000 return was received but the 2001 return still is outstanding. No copies of the federal returns were submitted. The hearing officer repeatedly has attempted to contact Taxpayer in order to resolve this assessment, but the calls have gone unanswered. Having waited one month beyond the agreed deadline, the Department now chooses to pursue Taxpayer no more. Taxpayer actively has chosen not to avail himself of the opportunity to rebut the assessment. Based on the information in the case file and the incomplete returns and documentation provided by Taxpayer, the assessment is upheld.

I. **Individual Income Tax—Assessment**

FINDING

For the reasons named above, Taxpayer's protest is denied. The assessment is upheld.

DEPARTMENT OF STATE REVENUE

02-20030277.LOF

LETTER OF FINDINGS NUMBER: 03-0277
Gross Income & Adjusted Gross Income Tax
For the Years 1998, 1999, 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

I. Adjusted Gross Income Tax— Intangible Holding Companies

Authority: Ind. Code § 6-3-2-2; Ind. Code § 6-3-2-2.4; Ind. Code § 6-8.1-5-1; *Chief Industries v. Ind. Dep't of Revenue*, 792 N.E.2d 972 (Ind. Tax 2000); *Bethlehem Steel Corp. v. Ind. Dept. of State Revenue*, 597 N.E.2d 1327, 1331 (Ind. Tax Ct. 1992); *Allied-Signal Corp. v. Director, Division of Taxation,* 504 U.S. 768 (1992); *F.W. Woolworth Co. v. Taxation and Revenue Dep't. of New Mexico,* 458 U.S. 354 (1982); *Exxon Corp. v. Dept. of Revenue of Wisconsin*, 447 U.S. 207 (1980); *Gregory v. Helvering* 293 U.S. 465 (1935); *Lee v. Commissioner of Internal Revenue*, 155 F.2d 584, 586 (2d Cir. 1998); *Horn v. Commissioner*, 968 F.2d 1229, 1236-37 (D.C. Cir. 1992); *Commissioner v. Transp. Trading and Terminal Corp.*, 176 F.2d 570, 572 (2nd Cir. 1949), *cert denied,* 338 U.S. 955 (1950); *Zebra Technologies Corp. v. Topinka*, 799 N.E.2d 725 (Ill. Ct. App. 2003); *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993).

Taxpayer maintains that the Department of Revenue erred when it recomputed taxpayer's adjusted gross income to include an affiliated company on a unitary basis.

II. Gross Income Tax—Taxability of Intangibles

Authority: Ind. Code § 6-2.1-4-6; 45 IAC 1.1-6-2.; *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993).

Taxpayer protests the assessment of gross income tax with respect to royalties paid to a related taxpayer located outside the United States.

III. Tax Administration—Penalty

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

Taxpayer protests the imposition of the ten percent penalty for negligence.

STATEMENT OF FACTS

Taxpayer is an out-of state company in the business of selling automobile supplies at retail stores throughout the United States, including Indiana. In the fiscal year ending in 1998, taxpayer transferred certain trademarks and its trade name to a wholly owned subsidiary ("Subsidiary") based in the Cayman Islands. Taxpayer in turn paid Subsidiary in exchange for the right to use the trademarks that Taxpayer previously owned, which Taxpayer then licensed to yet another subsidiary that consisted of its stores. Taxpayer had considerable property in Indiana, while Subsidiary did not maintain employees or offices in Indiana.

Department audited taxpayer's Indiana corporate income tax returns for taxable years 1998, 1999 and 2000. As a result of the audit, Department made several adjustments to the taxpayer's returns for both gross income and adjusted gross income tax purposes. For gross income tax purposes, Subsidiary was assessed gross income tax, based on the theory that the intangibles had acquired an Indiana situs, and not exempt for intracompany deduction because Subsidiary was not registered for business in Indiana. For adjusted gross income tax purposes, Taxpayer and Subsidiary were combined as a unitary filer. Taxpayer filed a protest, claiming that the Department could not constitutionally tax the intangible income either for gross income tax or for adjusted gross income tax.

I. Adjusted Gross Income Tax—Intangible Holding Companies

DISCUSSION

With respect to adjusted gross income, Taxpayer raises the issues of whether the royalty income can even be subject to Indiana adjusted gross income tax and whether the Department can require a unitary filing of two or more taxpayers in this case. In the alternative, the issues of whether the transaction is a sham transaction and if Subsidiary itself was subject to taxation on the basis of having Indiana situs must be addressed.

A. Applicability of Chief Industries

The first argument presented by Taxpayer is that the income from Subsidiary's royalties is not subject to taxation in Indiana based on the Tax Court's holding in *Chief Industries v. Ind. Dep't of Revenue*, 792 N.E.2d 972 (Ind. Tax 2000). However, it is difficult to understand Taxpayer's argument with respect to the royalties under the generally accepted statutory scheme provided by 6-3-2-2(a)-(k) - that is, whether it was business or non-business income, and whether the sales, payroll and property of the taxpayer were apportionable to Indiana in the case of business income or the income was allocable to Indiana in the case of non-business income. In this light, Taxpayer's argument does not address this issue, and accordingly must fail.

B. Sham transaction

The "sham transaction" doctrine is well established both in state and federal tax jurisprudence dating back to *Gregory v. Helvering* 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." *Commissioner v. Transp. Trading and Terminal Corp.*, 176 F.2d 570, 572 (2nd Cir. 1949), *cert denied,* 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the

taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. *Horn v. Commissioner*, 968 F.2d 1229, 1236-37 (D.C. Cir. 1992). In determining whether a business transaction was an economic sham, two factors can be considered; "(1) did the transaction have a reasonable prospect, ex ante, for economic gain (profit), and (2) was the transaction undertaken for a business purpose other than the tax benefits?" *Id*. at 1237.

The question of whether or not a transaction is a sham, for purposes of the doctrine, is primarily a factual one. *Lee v. Commissioner of Internal Revenue*, 155 F.2d 584, 586 (2d Cir. 1998). The taxpayer has the burden of demonstrating that the subject transaction was entered into for a legitimate business purpose. Ind. Code § 6-8.1-5-1(b).

Here, it is difficult if not impossible to ascertain a business purpose for the arrangement between Taxpayer and Subsidiary. Taxpayer transferred the intellectual property that it created to Subsidiary, which licenses that property only to Taxpayer. Miraculously, Taxpayer had only a relatively modest profit from its operations of auto part retailers, but Subsidiary generated substantial profits from licensing some names and logos to nobody but their prior owner, and maintained only a small office on a Caribbean island. The shareholders of Taxpayer looked at the bottom line and saw no overall difference in the companies' operating performance. To state that Taxpayer's names and logos derived a value separate from its underlying business comports neither with reality nor common sense.

By permitting Taxpayer the deduction it claimed for adjusted gross income tax purposes is to exact a violence on the term "fairly allocate," per Ind. Code § 6-3-2-2(l) that can only be corrected by reallocating the income between Taxpayer and Subsidiary. Accordingly, the deduction for the payment to Subsidiary-the sham transaction in this case-is disallowed.

Taxpayer is, of course, entitled to structure its business affairs in any manner its sees fit and to vigorously pursue any tax advantage attendant upon the management of those affairs. However, in determining the nature of a business transaction and the resultant tax consequences, the Department is required to look at "the substance rather than the form of the transaction." *Bethlehem Steel Corp. v. Ind. Dept. of State Revenue*, 597 N.E.2d 1327, 1331 (Ind. Tax Ct. 1992). The transfer of the intellectual property and the royalty payments were purely matters of "form" and lack any business "substance."

C. Unitary filing

The second issue to be addressed is whether Taxpayer and Subsidiary can properly be combined on a unitary return. Under Ind. Code § 6-3-2-2(l),

> If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:
>
> (1) separate accounting;
>
> (2) the exclusion of any one (1) or more of the factors;
>
> (3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or
>
> (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

In addition, Ind. Code § 6-3-2-2(m) states:

> In the case of two or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interests, the Department shall distribute, apportion, or allocate the income derived from sources within the state of Indiana between and among those organizations, trades or businesses in order to fairly reflect and report the income derived from sources within the state of Indiana by various taxpayers.

Subsidiary was a wholly owned subsidiary of Taxpayer, so common control was not at issue. Thus, the issue remains as to whether Taxpayer and Subsidiary in fact constituted a unitary business.

To look at whether a taxpayer and subsidiary comprise a unitary business, one must look at the (1) functional integration; (2) centralization of management; and (3) economies of scale. *Allied-Signal Corp. v. Director, Division of Taxation,* 504 U.S. 768, 781 (1992) *(citing F.W. Woolworth Co. v. Taxation and Revenue Dep't. of New Mexico,* 458 U.S. 354, 364 (1982)). In order to exclude certain income from the apportionment formula, the company must prove that "the income was earned in the course of activities unrelated to the sale of [property] in that State." *Exxon Corp. v. Dept. of Revenue of Wisconsin*, 447 U.S. 207, 223-224 (1980) *(citing Mobil Oil Corp. v. Commissioner of Taxes*, 445 U.S. 425, 439 (1980)). One "looks to the "underlying economic realities of a unitary business," and the income must derive from "unrelated business activity" which constitutes a "discrete business enterprise,"" *Mobil*, 445 U.S. at 439, 441-442.

With respect to functional integration, in *F.W. Woolworth*, the court noted that the operation of taxpayer and four foreign subsidiaries who maintained separate operations failed to constitute functional integration necessary to permit unitary taxation. 458 U.S. at 364-365. Here, Taxpayer wholly owns Subsidiary. Taxpayer paid royalties for the right to use trademarks owned by Subsidiary. Taxpayer and Subsidiary received income only when Taxpayer sold auto parts. Even with the royalty-payment transaction, nothing changed with respect to the taxpayer's overall business- Taxpayer acknowledged in Securities & Exchange Commission filings for several years that the trademarks now held by the new corporation were "important components of our merchandising and marketing strategy" before AND AFTER the formation of Subsidiary. One of two inferences can be made from

this: either the names aren't so important to Taxpayer that it can allow Subsidiary to use it even to the detriment of Taxpayer, or the two companies are *de facto* one enterprise.

Further, even though the companies had some different managers, the companies had the same key executives. Accordingly, Taxpayer and Subsidiary met this requirement of unitary filing.

With respect to economies of scale, the company has not provided any evidence that the auditor's determination was incorrect. Further, with respect to any economies of scale, it would appear that Taxpayer, by virtue of not having to incur the expense of additional officer compensation and of additional costs associated with actual licensing agreements with third parties, achieved the necessary economies of scale. In the alternative, Subsidiary managed to generate several million dollars out of a single office-a ratio far greater than its revenue-to-marginal expense ratio likely found at its retail stores, achieving the necessary economies of scale.

Finally, with respect to fair representation of income, Taxpayer's transaction can only be described as not fairly representing Taxpayer's income. Taxpayer received a substantial profit from its stores' sales of automobile parts, only to have it greatly reduced by using its own name for a substantial sum of money. Both businesses, if respected as businesses, constituted an integrated enterprise, and to state that only the portion due to its primary automobile parts business was taxable, without recognizing the whole of the enterprise to overall profitability, was to not fairly represent Taxpayer's income in Indiana.

Taxpayer also noted that its subsidiary was located in a foreign country, and therefore it should be exempt under Ind. Code § 6-3-2-2(o), which provides that a foreign corporation or foreign operating company cannot be combined under subsections (l) and (m). A foreign operating company is defined by Ind. Code § 6-3-2-2.4(a) as being a company which has 80% or more of its business activity outside the United States. A business meets the criteria if its United States property factor (defined as United States property over worldwide property) and its United States payroll factor (defined as United States payroll over worldwide payroll), added together, divided by 2, is greater than or equal to 0.80. IC 6-3-2-2.4

Only one court has dealt with the situation presented by the Taxpayer and Subsidiary in this case with respect to an intangibles holding company located in a foreign country. In *Zebra Technologies Corp. v. Topinka*, 799 N.E.2d 725 (Ill. Ct. App. 2003), a company engaged in the business of manufacturing bar-coding equipment formed another corporation, incorporated in Bermuda to which it transferred its intellectual property. Taxpayer maintained that the corporation was not subject to forced unitary filing based on an Illinois statute similar to Ind. Code § 6-3-2-2(o). In particular, the taxpayer argued that the company had no payroll or property in the United States, and therefore was precluded from forced unitary filing. The court, however, noted that much of the work related to the intellectual property actually occurred in the United States, held that the company in question was not a foreign operating company, and therefore subject to unitary filing. *Id.* at 732-734.

Here Taxpayer was presented with an opportunity to address this issue during hearing and in the period after the hearing Taxpayer was presented an additional opportunity to gather information. Taxpayer has not presented information other than its statement that the Subsidiary was a foreign operating company and a note that the case cited above was not an Indiana case, without further information regarding exploitation of the intellectual property either in the United States or elsewhere. Accordingly, Taxpayer's burden to show that the company was in fact a foreign operating company has not been met.

D. Subsidiary has Indiana situs

Even if the subsidiary was not a unitary taxpayer, Subsidiary's income was Indiana source income when it engaged in transactions related to "exploiting" intellectual property.

Here, the case *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993), though not controlling, is quite persuasive. In that case, a large toy company established a company to which it transferred its trademarks. The toy company paid a percentage of its sales to the trademark holding company. The trademark holding company was located in Delaware, but had no employees. *Id.* at 15, n.1. The toy company claimed a deduction for its royalty payments to the holding company for South Carolina corporate income tax purposes, but claimed that none of the royalty payments were South Carolina source income. South Carolina claimed that the holding company had conducted business in South Carolina, while the holding company claimed that taxation of its royalty income by South Carolina was prohibited by the federal constitution. The court noted that the holding company had nexus with South Carolina, via the purposeful opening of stores in South Carolina and the toy company's sales of merchandise at its South Carolina stores, through which the holding company derived its revenues. *Id.* at 16-18. Accordingly, the court held that the taxation of the holding company's income was permissible under the United States Constitution and South Carolina law.

Subsidiary was engaged of managing intellectual property-property that has no value apart from Taxpayer's sales of merchandise. To state that the intangible income derived from the licensing transactions only took place in the Cayman Islands, in an office with a telephone, fax machine, computer and some furniture, did not fairly represent the transaction between Taxpayer and Subsidiary. Taxpayer sold automobile products for a business, in this state, almost every other state, and a few foreign countries. Taxpayer derived the benefit of sales made in Indiana stores of its services and parts. To state that the royalty income was income derived only from the Cayman Islands was to very conveniently ignore that the sales and service that made the taxpayer a veritable household name occurred in many states other than the Cayman Islands (where, interestingly, Taxpayer did not even have a store), and that Subsidiary's own revenues for the royalties necessarily derived from the sales that transpired in many states and countries, rather than just the Cayman Islands.

FINDING

Taxpayer's protest is denied.

II. Gross Income Tax— Taxability of Intangibles

DISCUSSION

Taxpayer protests the imposition of gross income tax with respect to its royalty payments made to a related taxpayer located in the Cayman Islands.

In this case, three issues must be resolved:

1. Did the taxpayer have an Indiana situs for its intangibles?
2. Is the taxpayer a unitary filer?
3. Is the whole transaction a sham transaction?

With respect to situs, taxpayer argues that the intangibles formed an integral part of a trade or business situated and regularly conducted outside Indiana, noting the location of its intangibles in the Cayman Islands. Accordingly, under Department regulations, the intangible income should be attributed to that location.

However, it cannot be said that this is an entirely accurate assessment of the taxpayer's arrangement. Taxpayer's arrangement basically works in this manner: Taxpayer's store subsidiary made a sale of auto parts at its store. Taxpayer in turn took the money and paid to Subsidiary a percentage of that money for the "right" to use Taxpayer's own name. By virtue of its control of Taxpayer's name and its exploitation in Indiana, Subsidiary acquired an Indiana situs.

Taxpayer argues that the auditor's reliance on the *Geoffrey* case cited previously is misplaced, first by noting that the case was decided in another state, and second by noting the regulations stated above. While *Geoffrey* is persuasive rather than mandatory authority in Indiana, the reasoning that the intangible has situs in this circumstance is worthy of discussion. In the current case, Subsidiary only derived income upon the sale of goods at its stores. This is very similar to the intangible holding company in *Geoffrey,* which the court noted derived its income not from the mere holding of a piece of paper, but rather from retail transactions that the retailer purposely sought. Further, unlike a conventional franchise arrangement in which a holder of a name agrees to allow unrelated third parties to use its name, Subsidiary transacted business only with Taxpayer. To the extent that the subsidiary yielded its "royalties" as a result of Indiana sales, the intangible formed an integral part of a business regularly carried on in Indiana; thus, the intangibles had a business situs in Indiana, and accordingly were properly subject to Indiana gross income tax. 45 IAC 1.1-6-2. Further, because Subsidiary was not authorized to do business in Indiana, the deduction under Ind. Code § 6-2.1-4-6 for transfers between affiliated corporations filing consolidated returns was not permitted.

If Taxpayer and Subsidiary were in fact a unitary business, the same result is reached. Finally, given that no exemption or deduction exists for gross income received in a sham transaction, then the income was still taxable, notwithstanding the disregard for the transaction otherwise for tax purposes.

FINDING

Taxpayer's protest is denied.

III. Tax Administration—Penalty

DISCUSSION

Taxpayer argues that it is not subject to negligence penalties with respect to the additional taxes assessed against it. In particular, Taxpayer argues that the additional tax was due to its different, but reasonable, interpretation of the statute. Accordingly, it argues that it was not negligent in its tax returns for the years in question.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. Ind. Code § 6-8.1-10-2.1. The Indiana Administrative Code further provides:

> (b) "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.
>
> (c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 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. Factors which may be considered in determining reasonable cause include, but are not limited to:
>
> (1) the nature of the tax involved;
>
> (2) judicial precedents set by Indiana courts;
>
> (3) judicial precedents established in jurisdictions outside Indiana;
>
> (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;

(5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

45 IAC 15-11-2.

Taxpayer has acted in a manner with respect to the tax laws of this state that leads the Department to believe that its actions were a negligent disregard of those laws at best. Accordingly, the penalty must stand.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420030304.LOF

LETTER OF FINDINGS NUMBER: 03-0304
Sales and Use Tax
For the Years 2000-2002

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 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- Imposition

Authority: IC 6-8.1-5-1 (b), IC 6-2.5-2-1, IC 6-2.5-4-10, IC 6-2.5-5-8, IC 6-2.5-8-8, 45 IAC 2.2-8-12.

The taxpayer protests the imposition of sales tax.

II. Tax Administration- Ten Percent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

The taxpayer is a corporation renting linens to businesses such as caterers, country clubs, and restaurants. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales tax, interest, and penalty for the tax period 2000-2002. The taxpayer protested the assessment of sales tax on its leases of linens. The taxpayer contended that its leases qualified for exemption because its customers re-leased the linens to their customers. A telephone hearing was held and this Letter of Findings results.

I. Sales and Use Tax-Imposition

The 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. IC 6-8.1-5-1 (b).

Indiana imposes a sales tax on retail sales of tangible personal property in Indiana. The sellers of the property are required to collect the sales tax from the purchasers and remit that tax to the state unless the sale qualifies for a statutory exemption. IC 6-2.5-2-1. The rental of tangible personal property is defined as a retail sale subject to the Indiana sales tax. IC 6-2.5-4-10. Sales and leases of tangible personal property to another for the purpose of selling or leasing the property in the ordinary course of business is exempt from the Indiana sales tax. IC 6-2.5-5-8.

IC 6-2.5-8-8 provides for exemption certificates from sales tax in pertinent part as follows:

(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.

45 IAC 2.2-8-12 clarifies the law concerning exemption certificates in pertinent part as follows:

(d)Unless the seller receives a properly completed exemption certificate the merchant must prove that sales tax was collected and remitted to the state or that the purchaser actually used the item for an exempt purpose. It is, therefore, very important to the seller to obtain an exemption certificate in order to avoid the necessity for such proof...

Pursuant to the statute and explanatory regulation, the production of a valid exemption certificate exempts the merchant from the duty of collecting and remitting sales tax. Without a valid exemption certificate, the burden shifts back to the merchant to prove that the sales were not actually subject to sales tax. The taxpayer provided valid exemption certificates for several of the leases on which the department assessed sales tax. The taxpayer had no duty to collect and remit sales tax on these leases.

The taxpayer had two customers who did not provide valid exemption certificates. Therefore, the taxpayer has the burden of proving that the leases to these customers were exempt from the sales tax. To establish that these leases were exempt from the sales tax, the taxpayer presented letters indicating that the customers paid use tax on the use of the linens so no sales tax would be due on the transfer. These letters are not adequate to sustain the taxpayer's burden of proving that the leases were actually exempt from sales tax.

FINDING

The taxpayer's protest to the sales tax assessed on leases to customers who provided valid exemption certificates is sustained. The remainder of the protest is denied.

II. Tax Administration- Ten Percent (10%) Negligence Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

> 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 taxpayer ignored the law and department's instructions for registration with the department and the collection and remittance of Indiana sales taxes. These breaches of the taxpayer's duty constitute negligence.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220030358.LOF

LETTER OF FINDINGS: 03-0358
Indiana Corporate Income Tax
For the Years 1998 through 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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Unrelated Business Income – Adjusted Gross Income Tax.

Authority: IC 6-3-2-2.8; IC 6-3-2-3.1; 45 IAC 1.1-3-9; 45 IAC 1.1-3-9(a); 45 IAC 3.1-1-68; I.R.C. § 511; I.R.C. § 511(a); I.R.C. § 512; I.R.C. § 512(a); I.R.C. § 513; Deer Park Country Club v. Commissioner, 70 T.C.M. (CCH) 1445 (1995); 2002 U.S. Master Tax Guide (CCH 2002).

Taxpayer argues that it is not subject to adjusted gross income tax on the money it received from the sale of its real property and equipment.

STATEMENT OF FACTS

Taxpayer is a not-for-profit organization located within the state and qualified as an I.R.C. § 501(c)(7) organization. The taxpayer's main purpose was to own, operate, and maintain a facility for the members of an associated fraternal organization which, itself, was not in a position to own the property. In 1999, taxpayer sold the building, contents, and equipment.

During 2003, the Department of Revenue (Department) conducted an audit review of taxpayer's business records and tax returns. The audit resulted in an assessment of additional adjusted gross income tax. Taxpayer challenged this assessment, submitted a protest to that effect, an administrative hearing was conducted during which taxpayer further explained the basis for its protest, and this Letter of Findings results.

DISCUSSION

I. Unrelated Business Income – Adjusted Gross Income Tax.

The audit found that taxpayer owed adjusted gross income tax on the amount of money it received when it disposed of real and personal property in 1999. The audit did so under authority of IC 6-3-2-2.8 which states in part that "Notwithstanding any provision of IC 6-3-1 through IC 6-3-7, there shall be no tax on the adjusted gross income of the following: (1) Any organization described in Section 501(a) of the Internal Revenue Code, except that any income of such organization which is subject to income tax under

the Internal Revenue Code shall be subject to the tax under IC 6-3-1 through IC 6-3-7."

The audit concluded that the income *was* subject to income tax under the Internal Revenue Code based upon the I.R.C. § 512 definition of "unrelated business taxable income." I.R.C. § 512 states that, "Except as otherwise provided in this subsection, the term 'unrelated business taxable income' means the gross income derived by any organization from an unrelated trade or business (as defined in section 513) regularly carried on by it, less the deductions allowed by this chapter which are directly connected with carrying on of such trade or business...."

I.R.C. § 513 states that, "the term 'unrelated trade or business' means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related... to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501...."

I.R.C. § 511 imposes a federal income tax "on unrelated business income of charities" including "organizations described in sections 401(a) and 501(c)." I.R.C. § 511(a). I.R.C. § 512 states that unrelated business income consists of the gross income from any unrelated trade or business "regularly" carried on minus business deductions directly connected with the unrelated business income. I.R.C. § 512(a). To be taxable, income must be from a business not substantially related to the exercise of the charitable, educational, or other purpose on which the exemption is based. I.R.C. § 513.

Taxpayer argues that the income is not subject to the state adjusted gross income tax because only the unrelated business income as defined in I.R.C. § 513 is subject to adjusted gross income and supplemental net income tax. Taxpayer cites as authority IC 6-3-2-3.1 which states in part that, "Except as otherwise provided in subsection (b), income is not exempt from the adjusted gross income tax, or the supplemental net income tax, under section 2.8(1) of this chapter if the income is derived by the exempt organization from an unrelated trade or business as defined in Section 513 of the Internal Revenue Code." IC 6-3-2-3.1(a). *See also* 45 IAC 3.1-1-68. According to taxpayer, because the income comes within the definition found under § 512(a)(3), it is not subject to state tax under IC 6-3-2-3.1.

"Although, under Code Sec. 501, a variety of nonprofit philanthropic or mutually beneficial organizations may be granted tax-exempt status, they may become subject to tax on income from a business enterprise not related to their purpose." 2002 U.S. Master Tax Guide para. 655, p. 211 (CCH 2002). I.R.C. § 512(a) provides in relevant part as follows:

> For purposes of this title (3) Special rules applicable to organizations described in section 501(c)(7) or (9)... (D) Nonrecognition of gain... If property used directly in the performance of the exempt function of an organization described in section 501(c)(7) or (9) is sold by such organization, and within a period beginning 1 year before the date of such sale, and ending 3 years after such date, other property is purchased and used by such organization directly in the performance of its exempt function, gain (if any) from such sale shall be recognized only to the extent that such organization's sales price of the old property exceeds the organization's cost of purchasing the other property. For purposes of this subparagraph rules similar to the rules provided by subsections (b), (c), (e), and (j) of section 1034 shall apply.

The audit report found that "The taxpayer did not purchase other property within the 3 year time limit; therefore, they must recognize the full gain on the property sold as 'unrelated business taxable income.'" In addition, the audit report found that "the taxpayer did not set aside interest and dividends income derived from the investment of receipts from the sale of the property over the 3 year period as required under IRC 512(a)(3)(B) for determining 'exempt function income'... [therefore] it too becomes 'unrelated business taxable income' as defined under IRC § 512." The secondary reference to which the audit report refers is found at I.R.C. § 512(a)(3)(B) which defines "exempt function income" as "all income (other than an amount equal to the gross income derived from any unrelated trade or business regularly carried on by such organization computed as if the organization were subject to paragraph (2)), which is set aside (i) for a purpose specified in section 170(c)(4), or (ii) in the case of an organization described in paragraph (9), (17), or (3) of section 501(c) to provide for the payment of life, sick, accident or other benefits, including reasonable costs of administration directly connected with a purpose described in clause (i) or (ii)."

In other words, the audit report found that taxpayer did not reinvest the money it earned from the sale of its property within three years and did not use the interest earned on that same money for an exempt purpose. Taxpayer does not contest either of these conclusions.

Taxpayer is correct that the term "unrelated trade or business" is defined in I.R.C. § 513. However, the term "unrelated business taxable income" is defined in I.R.C. § 512. The two sections must be read together to determine what is "unrelated trade or business" and whether income from that "unrelated trade or business" constitutes "unrelated business taxable income." I.R.C. § 511 imposes a tax on the "unrelated business income of charitable etc. organizations," I.R.C. § 513 sets out the definition of "unrelated trade or business," and I.R.C. § 512 explains how to determine the amount of "unrelated business taxable income." The income taxpayer derived was from an "unrelated trade or business" as defined under I.R.C. § 513 and becomes subject to the state's adjusted gross (and supplemental net income) tax pursuant to IC 6-3-2-3.1.

In Deer Park Country Club v. Commissioner, 70 T.C.M. (CCH) 1445 (1995), the court stated that, "The plain language of section 512(a)(3)(D) limits nonrecognition treatment to gains realized on the sale of property used directly in the performance of the organization's exempt function." The court concluded "that the plain and ordinary meaning of the phrase 'used directly in the performance of the exempt function of an organization' as set forth in section 512(a)(3)(D) connotes an exempt organization's use

of assets or property that is both actual and direct in relation to the performance of its exempt function." The court concluded that the petitioner – an I.R.C. 501(c)(7) organization – was not entitled to nonrecognition treatment for the money it received when it sold a portion of its property to a housing development because the money was not used directly in the performance of the taxpayer's exempt function.

As an organization described in I.R.C. § 501(a), taxpayer was entitled to the state tax exemption provided under IC 6-3-2-2.8. However, that state exemption ended to the extent that taxpayer received income "subject to income tax under the Internal Revenue Code...." IC 6-3-2-2.8.

Nonetheless, taxpayer points out that the audit found that the income was not subject to gross income tax pursuant to 45 IAC 1.1-3-9. Taxpayer's argument is that if the income was not subject to gross income tax, that same income cannot be subject to adjusted gross income tax. The cited regulation states in relevant part that, "Except as provided in subsections (b), (c), and (e) a taxpayer organized and operated for fraternal or social purposes or as a business league or association is not subject to the gross income...." 45 IAC 1.1-3-9(a) However, the regulation also states that "The exemption provided by subsection (a) does not apply to gross income derived from an unrelated trade or business as defined in Section 513 of the Internal Revenue Code." Taxpayer is correct in pointing out that the audit's conclusion – that the income from the sale of the property *was not* subject to gross income tax pursuant to 45 IAC 1.1-3-9 but *was* subject to adjusted gross income tax – is inconsistent.

However, the answer to taxpayer's challenge is that the audit erred in concluding that the income was not subject to gross income tax. The regulation plainly stipulates that if the fraternal organization receives income from an "unrelated trade or business" as set out in I.R.C. § 513, that income is subject to the state's gross income tax. The money taxpayer received from selling real and personal property was unrelated to its fraternal purposes, falls within I.R.C. § 513, and loses the exemption set out in 45 IAC 1.1-3-9(a).

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0220030381.LOF

LETTER OF FINDINGS: 03-0381
Indiana Corporate Income Tax
For the Years 1999, 2000, and 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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Resource Recovery System Credit – Gross Income Tax.

Authority: IC 6-2.1-4-3; IC 6-2.1-4-3(a); IC 6-2.1-4-3(b); IC 13-11-2-99(a); IC 13-11-2-205(a); Black's Law Dictionary (7th ed. 1999); American Heritage Dictionary (1st ed. 1969).

Taxpayer argues that the Department of Revenue erred when it disallowed taxpayer's depreciation deduction for its resource recovery system.

II. Abatement of the Ten-Percent Negligence Penalty.

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

Taxpayer asks that the Department of Revenue exercise its discretion to abate the ten-percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana company in the business of manufacturing aluminum wheels. The Department of Revenue (Department) conducted a review of taxpayer's state income tax returns. That review resulted in the assessment of additional Indiana corporate income taxes. Taxpayer disagreed with the Department's conclusions reached during this initial review and with the consequent additional assessments. Accordingly, taxpayer submitted a protest to that effect, an administrative hearing was conducted during which taxpayer explained the basis for its protest, and this Letter of Findings results.

DISCUSSION

I. Resource Recovery System Credit – Gross Income Tax.

Taxpayer manufactures aluminum automobile wheels. Taxpayer does so by melting aluminum ingots in its furnaces and pouring the molten aluminum into gravity molds. After the aluminum has cooled, the partially finished wheels are removed from the molds. Taxpayer then machines the partially finished wheels to remove excess aluminum. During this machining, chemical coolants are sprayed on the wheels. A certain amount of the coolant remains on the aluminum shavings. The contaminated aluminum shavings

are collected by a series of conveyors and placed in bins. According to taxpayer, it cannot use the contaminated aluminum shavings until the coolant residue is removed. Because it lacks the capacity to do so itself, taxpayer sends the contaminated shavings to a third-party processor which is equipped to remove the contaminants. The third-party processor treats the aluminum shavings, taxpayer pays third-party processor a fee for this service, and the third-party processor returns the decontaminated shavings – in the form of newly cast ingots – to taxpayer. The newly formed ingots are now suitable for reintroduction into taxpayer's manufacturing process.

Taxpayer maintains that, by virtue of its manufacturing and reclamation process, it operates a "resource recovery system" (RRS). Therefore, taxpayer originally claimed a credit for its RRS against receipts subject to Indiana gross income tax equal to the amount of depreciation of the RRS taken on its federal returns.

The Department's review of taxpayer's income tax returns concluded that taxpayer was not entitled to take the credit because taxpayer's treatment of the contaminated aluminum shavings "[did] not qualify for the resource recovery credit." The Department found that any "resource recovery system" must process solid waste or hazardous waste and that the term "waste" was defined as "a worthless or useless by-product such as garbage or trash." The Department concluded that the aluminum shavings were not "waste" because the shavings had value to the taxpayer. According to the Department's initial report, "Waste does not include scrap."

Taxpayer claimed the RRS credit under the authority provided for in IC 6-2.1-4-3. The statute states in relevant part as follows:

> If for federal income tax purposes a taxpayer is allowed a depreciation deduction for a particular taxable year with respect to a RRS, and if the resource recovery system processes solid waste or hazardous waste, the taxpayer is entitled to a deduction from his gross income for that same taxable year. IC 6-2.1-4-3(b).

Therefore, in order for any taxpayer to claim the credit, that taxpayer must (1) operate a RRS, (2) the taxpayer must have been allowed a federal credit, and (3) the RRS must process "solid waste or hazardous waste."

The statute sets out the criteria under which the taxpayer may claim the credit. "'Hazardous waste' has the meaning set forth in IC 13-11-2-99(a) and includes a waste determined to be hazardous waste under IC 13-22-2-3(b)." IC 6-2.1-4-3(a).

IC 13-11-2-99(a) states that the term "hazardous waste" means:

> a solid waste or combination of solid wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may: (1) cause or significantly contribute to an increase in: (A) mortality; (B) serious irreversible illness; or (C) incapacitating reversible illness; or (2) pose a substantial present or potential hazard to (A) human health; or (B) the environment; when improperly treated, stored, transported, disposed of, or otherwise managed.

In addition, the RRS statute defines "solid waste" stating that "'Solid' waste has the meaning prescribed by IC 13-11-2-205(a) but does not include dead animals or any animal solid or semisolid wastes." IC 6-2.1-4-3(a).

IC 13-11-2-205(a) states in part that "'Solid waste', for purposes of IC 13-19, IC 13-21, IC 13-20-22, and environmental management laws... means any garbage, refuse, sludge from a waste treatment plant, sludge from a water supply plant, sludge from an air pollution control facility, or other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, or agricultural operations or from community activities."

In enacting IC 6-2.1-4-3, the Legislature limited the availability of the depreciation credit to those taxpayers which process either "hazardous waste" or "solid waste."

Taxpayer contends that the contaminated aluminum shavings are "waste" because – in their unprocessed form – they have no value to the taxpayer. According to taxpayer, the contaminated aluminum shavings have "less than no value" because the contaminated shavings represent the cost of eliminating the coolant chemicals.

The Department must disagree with the taxpayer on two grounds. Under the plain reading of the statute, both "hazardous waste" and "solid waste" constitute substances which have no intrinsic value. The definition of waste is that it constitutes "[r]efuse or superfluous material, esp[cially] that remaining after a manufacturing or chemical process." Black's Law Dictionary 1584 (7th ed. 1999). ("Any useless or worthless byproduct of a process or the like; refuse or excess material." American Heritage Dictionary 1447 (1st ed. 1969)). Therefore, in order to claim the gross income tax credit provided for under IC 6-2.1-4-3, the claimant taxpayer must have purchased and be operating a system that processes worthless, discarded materials.

The Department must also disagree with taxpayer's contention that the contaminated aluminum shavings have no value. Merely because it costs money to process the contaminated aluminum shavings does not mean that the shavings are valueless, discarded waste. Indeed, there are costs other than the expense of removing the coolant residue such as the cost of transporting the shavings to and from the third-party processor, the cost of reforming the shavings into manageable ingots, and the cost of resmelting the ingots at the time they are reintroduced into taxpayer's manufacturing process. Simply because it costs money to process and reintroduce the aluminum shavings does not mean that the shavings are valueless. Indeed, the entire point of this exercise is that the shavings do have an inherent value which justifies the expense of salvaging the raw aluminum and forming the recovered aluminum into salable wheels.

In addition to the above-noted objections, the Department must point out that it is entirely unclear as to just what it is that taxpayer is depreciating. IC 6-2.1-4-3 provides a credit for the depreciation of a RRS. However, from taxpayer's description of its manufacturing process, it is uncertain whether taxpayer has a RRS because the operation to remove the hazardous coolants is performed entirely by a third-party processor. Taxpayer appears to be operating a straight-forward manufacturing system. Other than

placing the contaminated shavings into bins, it is unclear what sort of "system" it operates to reprocess these aluminum shavings.

FINDING

Taxpayer's protest is respectfully denied.

II. Abatement of the Ten-Percent Negligence Penalty.

Taxpayer asks that the Department abate the ten-percent negligence penalty because in interpreting the "plain language of the resource recovery statute in taking a deduction... [it was] acting due to reasonable cause and not willful neglect."

IC 6-8.1-10-2.1 requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2(c) requires that 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...."

During a previous audit of its 1996 and 1997 returns, taxpayer was denied the RRS credit for purposes of calculating its gross income tax. The audit did so on the ground that its system did not qualify as a RRS because the system did not process valueless waste. Nonetheless, taxpayer claimed an identical credit based upon identical grounds on its 1999, 2000, and 2001 returns. Although taxpayer and the Department may continue to disagree concerning the applicability of the RRS credit, the Department is unable to conclude that taxpayer's decision to claim a previously disallowed credit constitutes "ordinary business care."

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0220030422.LOF

LETTER OF FINDINGS NUMBER: 03-0422
Income Tax
For the Years 1997-2001

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 Department's official position concerning a specific issue.

ISSUES

I. Gross Income Tax-Imposition

Authority: IC 6-8.1-5-1 (b), IC 6-2.1-2-2(a)(2), IC 6-2.1-1-2, 45 IAC 1-1-51, 45 IAC 1.1-6-2.

The taxpayer protests the imposition of gross income tax.

II. Adjusted Gross Income Tax-Imposition

Authority: IC 6-3-2-1, IC 6-3-2-2(a), 45 IAC 3.1-1-55.

The taxpayer protests the imposition of adjusted gross income tax.

III. Tax Administration-Ten Percent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

The taxpayer is a Delaware holding company. The taxpayer corporation receives its income from the licensing of its intellectual property and trademarks to affiliated companies that use the intellectual property in several states including Indiana. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional income tax, interest, and penalty. The taxpayer protested the imposition of the tax and ten percent (10%) negligence penalty. A hearing was held. This Letter of Findings results.

I. Gross Income Tax-Imposition

DISCUSSION

All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b).

The taxpayer's first protest concerns the department's imposition of gross income tax on its income from Indiana. Indiana imposes a gross income tax on the "taxable gross income derived from activities or businesses or any other sources within Indiana

by a taxpayer who is not a resident or a domiciliary of Indiana." IC 6-2.1-2-2(a)(2). For purposes of the gross income tax, "gross income" includes receipts from "the investment of capital, including interest, discounts, rentals, royalties, dividends, fees, and commissions." IC 6-2.1-1-2.

Under the regulations governing the gross income tax, "taxable gross income" includes income that is derived from "intangibles." 45 IAC 1-1-51(1997 and 1998) 45 IAC 1.1-6-2 (1999-2001). The term "intangibles" includes:

> Notes, stocks in either foreign or domestic corporations, bonds, debentures, certificates of deposit, accounts receivable, brokerage and trading accounts, bills of sale, conditional sales contracts, chattel mortgages, "trading stamps," final judgments, lease royalties, certificates of sales, choses in action, *and any and all other evidences of similar rights capable of being transferred, acquired or sold. (Emphasis added).* Id.

In order for Indiana to impose the gross income tax on income derived from the Delaware holding company's intangibles, the department must determine that the income is derived from a "business situs" within the state. Id. The regulation states that a taxpayer has established a "business situs" within the state "[i]f the intangible or the income derived therefrom forms an integral part of a business regularly conducted at a situs in Indiana...."Id. Once the taxpayer has established a "business situs" within the state, "and the intangible or the income derived therefrom is connected with that business, either actually or constructively, the gross receipts of those intangibles will be required to be reported for gross income tax purposes." Id.

Clearly the taxpayer's gross income, the licensing fees received from its affiliated corporation, is income derived from a "business situs" in Indiana. The taxpayer's intellectual property is licensed to the Indiana affiliated corporation. The intellectual property is "localized" in Indiana in the sense that the affiliated corporation uses the intellectual property to increase the value of the products the affiliated corporation sells in Indiana at the affiliated corporations sales outlets and distribution centers. But for the sales by the affiliated corporation in Indiana, the taxpayer would not receive the income.

The taxpayer's intellectual property has acquired a business situs within Indiana. The income at issue is connected with that business as contemplated by the Indiana statute imposing the gross income tax. Therefore, the department properly imposed the gross income tax on the taxpayer's licensing fees.

FINDING

The taxpayer's protest is denied.

II. Adjusted Gross Income Tax-Imposition

DISCUSSION

The taxpayer also protests the imposition of the adjusted gross income tax.

Indiana imposes an adjusted gross income tax on "that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC 6-3-2-1. The legislature has defined "adjusted gross income at IC 6-3-2-2(a) as follows:

> (1) income from real or tangible property located in this state; (2) income from doing business in this state; (3) income from a trade or profession conducted in this state; (4) compensation for labor or services rendered within this state; and (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter.

The taxpayer and the department agree that the taxpayer receives income from the licensing of its intellectual property, trademarks, from its affiliated corporation in Indiana. The issue is whether or not this income is derived from a source within Indiana so it is subject to the adjusted gross income tax. This issue is clarified by 45 IAC 3.1-1-55 as follows:

> The situs of intangible personal property is the commercial domicile of the taxpayer (i.e., the principal place from which trade or business of the taxpayer is directed or managed), unless the property has acquired a "business situs" elsewhere. "Business situs" is the place at which intangible personal property is employed as capital; or the place where the property is located if possession and control of the property is localized in connection with a trade or business so that substantial use or value attaches to the property.

The taxpayer licenses the intellectual property for use by its affiliated companies, deriving value from the ability to place the trademarks at retail locations in various states. The value attaches to the trademarks solely upon use at those retail and distribution locations including those in Indiana. Apart from the use in those locations, the trademarks would have no significant value. There would be no payments or income received by the taxpayer if the trademarks were not attached to products sold in Indiana locations. The income is inextricably connected with the affiliated corporation's retail outlets and distribution centers in Indiana. This constitutes a "business situs" subjecting the subject income to the Indiana adjusted gross income tax.

FINDING

The taxpayer's protest is denied.

III. Tax Administration- Ten Percent (10%) Negligence Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

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 reach 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 taxpayer disregarded its duty to file an Indiana corporate income tax return. This breach of the taxpayer's duty constituted negligence.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0320040040.LOF

LETTER OF FINDINGS NUMBER: 04-0040
Withholding Tax
Responsible Officer
For the Tax Period 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

1. Withholding Tax-Responsible Officer Liability

Authority: IC 6-3-4-8(f), IC 6-8.1-5-1(b).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate withholding taxes.

STATEMENT OF FACTS

The taxpayer was a shareholder in a corporation that did not properly remit withholding taxes to the state during the tax period 1998. The Indiana Department of Revenue, hereinafter referred to as the "department," assessed the unpaid withholding taxes, interest, and penalty against the taxpayer. The taxpayer protested the assessment of tax. A hearing was held and this Letter of Findings results.

1. Withholding Tax-Responsible Officer Liability

DISCUSSION

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. IC 6-8-1-5-1(b).

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides that "In 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."

The taxpayer admits that he was one of three persons responsible for the remittance of the subject withholding taxes to the state. The taxpayer contends, however, that he fulfilled his responsibility by giving another of the responsible parties a check for one third of the taxes due. That party failed to satisfy the liability with the state.

The statute clearly states that every responsible person is responsible for the payment of the entire amount of the tax due to the state. There is no statutory exemption granted for persons who gave another person money that was never remitted to the state.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040060.LOF

LETTER OF FINDINGS NUMBER: 04-0060
Sales and Use Tax
For Tax Years 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 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. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for six million, four hundred thousand dollars ($6,400,000.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. Taxpayer's rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that the same individual signed the leasing agreement as lessor and as lessee. Also, the Department has not received any documentation establishing that taxpayer's leasing business ever showed a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its two owner/renter parties to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

…

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance

of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0320040066.LOF

LETTER OF FINDINGS NUMBER: 04-0066
Withholding Tax
Responsible Officer
For the Tax Period 1999-2001

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

1. Withholding Tax-Responsible Officer Liability

Authority: IC 6-8.1-5-1(b), IC 6-3-4-8(f), Indiana Department of Revenue v. Safayan 654 N.E. 2nd 279 (Ind.1995).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate withholding taxes.

STATEMENT OF FACTS

The taxpayer was the President of a corporation that did not properly remit withholding taxes to the state during the tax period 1999-2001. The Indiana Department of Revenue assessed the unpaid sales taxes, withholding taxes, interest, and penalty against the taxpayer as a responsible officer of that corporation. The taxpayer protested the assessment of tax. A hearing was held and this Letter of Findings results.

1. Withholding Tax-Responsible Officer Liability

DISCUSSION

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. IC 6-8-1-5-1(b).

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides that "In 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."

Pursuant to Indiana Department of Revenue v. Safayan 654 N.E. 2nd 279 (Ind.1995) any officer, employee, or other person who has the authority to see that they are paid has the statutory duty to remit withholding taxes to the state. As the President of the

corporation, the taxpayer had the responsibility to oversee the corporation. The taxpayer failed to insure that the corporation fulfilled its financial responsibilities by remitting trust taxes to the Indiana Department of Revenue. The taxpayer had the statutory duty to remit the sales and withholding taxes due during his term as President of the corporation. Therefore, he is personally liable for the payment of those taxes not remitted to the state during that period.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040125.LOF

LETTER OF FINDINGS NUMBER: 04-0125
Sales and Use Tax
For Tax Years 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

I. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for three million, two hundred thousand dollars ($3,200,000.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. Taxpayer's rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that the same individual signed the leasing agreement as lessor and as lessee. Also, the Department has not received any documentation establishing that taxpayer's leasing business ever showed a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its renters to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

…

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease

of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040126.LOF

LETTER OF FINDINGS NUMBER: 04-0126
Sales and Use Tax
For Tax Year 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

I. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal

Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of sales tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for sales tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft in 2001 for three million, eight hundred forty five thousand dollars ($3,845,000.00) minus the value of a trade-in aircraft at one million, six hundred fifty two thousand, two hundred and fifty dollars ($1,652,250.00). Taxpayer claimed a sales tax exemption on the purchase of the aircraft. The Department compared a non-related aircraft rental company's rate to the rate taxpayer charged for its aircraft. The rental rate taxpayer charged its two customers ($175/hour) was far below the market rate for a comparable aircraft available for rent from a third party ($2,000/hour). The Department determined that taxpayer was not renting the aircraft and denied the exemption, issuing a proposed assessment on the two million, one hundred ninety two thousand, seven hundred and fifty dollars ($2,192,750.00) taxpayer paid for the aircraft. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customers provided documentation establishing exempt use of the aircraft. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) which states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. As previously explained, the rental rate was a fraction of rental rate charged by third parties for similar aircraft. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

…

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Next, taxpayer states that it leases the aircraft to two unrelated parties. Further, these parties are equal owners in the aircraft and therefore carry equal portions of the fixed operating costs and, when they use the aircraft individually, they pay an agreed to rental charge which is fixed in the rental agreement. Taxpayer states that there is substantially disproportionate use between the parties, therefore the establishment of the rental rate will benefit one at the cost of the other. Taxpayer believes this establishes an arms-length transaction.

The Department notes that taxpayer states that the parties are unrelated renters while they are simultaneously equal owners of the aircraft. The Department notes that these two conditions are mutually exclusive and cannot both be correct. An unrelated renter cannot concurrently be an owner of the aircraft. The Department further notes that taxpayer has not provided any documentation that it has ever posted a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its two owner/renter parties to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is

long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040127.LOF

LETTER OF FINDINGS NUMBER: 04-0127
Sales and Use Tax
For Tax Years 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

I. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of sales tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for sales tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for one million, four hundred fifty one thousand, eight hundred nineteen dollars ($1,451,819.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of

aircraft, to the rate taxpayer charged for its aircraft. The rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course

of his business. The Department notes that the same individual signed the leasing agreement as lessor and as lessee. Also, the Department has not received any documentation establishing that taxpayer's leasing business ever showed a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its two owner/renter parties to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

> The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.
>
> (1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.
>
> …

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of

avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040128.LOF

LETTER OF FINDINGS NUMBER: 04-0128
Sales and Use Tax
For Tax Years 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

I. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for one hundred eighty two thousand, five hundred dollars ($182,500.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. Taxpayer's rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided

documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that the same individual signed the leasing agreement as lessor and as lessee. Also, the Department has not received any documentation establishing that taxpayer's leasing business ever showed a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its renters to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

…

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid

lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040129.LOF

LETTER OF FINDINGS NUMBER: 04-0129
Sales and Use Tax
For Tax Years 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

I. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for one million, six hundred fifteen thousand, five hundred forty four dollars ($1,615,544.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. Taxpayer's rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that the same individual signed the leasing agreement as lessor and as lessee. Also, the Department has not received any documentation establishing that taxpayer's leasing business ever showed a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its two owner/renter parties to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

…

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason

to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040130.LOF

LETTER OF FINDINGS NUMBER: 04-0130
Sales and Use Tax
For Tax Years 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 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. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of sales tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for sales tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for one hundred thirty nine thousand, nine hundred dollars ($139,900.00) minus the trade in value of another aircraft of one hundred ten thousand dollars ($110,000.00) for a final purchase price of twenty nine thousand, nine hundred dollars ($29,900.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. The rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier

certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that the same individual signed the leasing agreement as lessor and as lessee. Also, the Department has not received any documentation establishing that taxpayer's leasing business ever showed a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its two owner/renter parties to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

…

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040131.LOF

LETTER OF FINDINGS NUMBER: 04-0131
Sales and Use Tax
For Tax Years 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

I. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for eight hundred and five thousand dollars ($805,000.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. Taxpayer's rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that the same individual signed the leasing agreement as lessor and as lessee. Also, the Department has not received any documentation establishing that taxpayer's leasing business ever showed a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its renters to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

…

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance

of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040132.LOF

LETTER OF FINDINGS NUMBER: 04-0132
Sales and Use Tax
For Tax Years 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 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. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for one million, nine hundred seventy five thousand dollars ($1,975,000.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. Taxpayer's rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department has not received any documentation establishing that taxpayer ever had any income from the rental of the aircraft. The Department was told that the aircraft had been in maintenance for over three (3) years including the previous

owner. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its renters to pay much less than a fair market value for the rental of the aircraft. The rental rate at issue was set far below the fair market rate, and there is no indication that anyone ever actually rented the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

> The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.
>
> (1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.
>
> …

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental

exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040140.LOF

LETTER OF FINDINGS NUMBER: 04-0140
Sales and Use Tax
For Tax Years 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

I. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to flight schools. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for two hundred fifty nine thousand dollars ($259,000.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. Taxpayer's rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used

for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that taxpayer did not provide a copy of any lease agreement, or even that it actually leased to any flight school, while flight logs establish that the two owners of the aircraft were virtually the only users of the aircraft. Even then, the owners paid a substantially reduced rental rate. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Taxpayer also refers to a revenue ruling it obtained from the Department. In the ruling, Issue 1 concerned the rental/leasing exemption. The Department's ruling was that since taxpayer claimed to be purchasing the aircraft for lease/rental purposes, it was able to purchase the aircraft exempt from sales and use taxes. The ruling also explains that, "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 taxpayer any protection." As previously explained, taxpayer has not provided any documentation that it was involved in a valid leasing/rental business. This is as fundamentally different in a material respect from the facts and circumstances given in the ruling as it could be. Therefore, the ruling affords taxpayer no protection.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as

rentals.

…

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040141.LOF

LETTER OF FINDINGS NUMBER: 04-0141
Sales and Use Tax
For Tax Years 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

I. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to flight schools. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for two hundred fifty nine thousand dollars ($259,000.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. Taxpayer's rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that taxpayer did not provide a copy of any lease agreement, or even that it actually leased to any flight school, while flight logs establish that the two owners of the aircraft were virtually the only users of the aircraft. Even then, the owners paid a substantially reduced rental rate. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Taxpayer also refers to a revenue ruling it obtained from the Department. In the ruling, Issue 1 concerned the rental/leasing exemption. The Department's ruling was that since taxpayer claimed to be purchasing the aircraft for lease/rental purposes, it was able to purchase the aircraft exempt from sales and use taxes. The ruling also explains that, "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 taxpayer any protection." As previously explained, taxpayer has not provided any documentation that it was involved in a valid leasing/rental business. This is as fundamentally different in a material respect from the facts and circumstances given in the ruling as it could be. Therefore, the ruling affords taxpayer no protection.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

…

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as

a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040156.LOF

LETTER OF FINDINGS NUMBER: 04-0156
Sales and Use Tax
For Tax Years 2003

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. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for one hundred twenty five thousand dollars ($125,000.00) and claimed a sales tax exemption.

The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. The rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-

15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that the same individual signed the leasing agreement as lessor and as lessee. Also, the Department has not received any documentation establishing that taxpayer's leasing business ever showed a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its two owner/renter parties to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

> The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.
>
> (1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.
>
> …

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The

rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040157.LOF

LETTER OF FINDINGS NUMBER: 04-0157
Sales and Use Tax
For Tax Years 2003

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. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for seven hundred and eighty five thousand dollars ($785,000.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. Taxpayer's rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that the same individual signed the leasing agreement as lessor and as lessee. Also, the Department has not received any documentation establishing that taxpayer's leasing business ever showed a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its two owner/renter parties to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

…

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for

insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040158.LOF

LETTER OF FINDINGS NUMBER: 04-0158
Sales and Use Tax
For Tax Years 2003

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. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for eight hundred and ten thousand dollars ($810,000.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. Taxpayer's rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that the same individual signed the leasing agreement as lessor and as lessee. The rental rate was far below the fair market rate. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

…

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040166.LOF

LETTER OF FINDINGS NUMBER: 04-0166
Sales Tax
Responsible Officer
For the Tax Period 1998-1999

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

1. Sales Tax-Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-8.1-5-1(b).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales taxes.

STATEMENT OF FACTS

The taxpayer was the trustee of a trust which was an investor in a corporation that did not remit the proper amount of sales taxes during the tax period 1998-1999. The Indiana Department of Revenue assessed the unpaid sales taxes, interest, and penalty against the taxpayer as a responsible officer of that corporation. The taxpayer protested the assessment of tax. A hearing was held and this Letter of Findings results.

1. Sales Tax-Responsible Officer Liability

DISCUSSION

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. IC 6-8-1-5-1(b).

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

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.

The taxpayer produced substantial documentation that he had no duty to collect and remit sales taxes to the state. Therefore, he is not personally responsible for the payment of the corporate sales taxes.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0120040192.LOF

LETTER OF FINDINGS: 04-0192
Indiana Adjusted Gross Income
For 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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Constitutionality of Indiana Adjusted Gross Income Tax.

Authority: Ind. Const. art. X, § 8; IC 6-3-1-3.5(a); IC 6-3-1-8; IC 6-3-1-9; IC 6-3-1-12; IC 6-3-1-15; United States v. Collins, 920 F.2d 619 (10th Cir. 1990); Betz v. United States, 40 Fed. Cl. 286 (Fed. Cl. 1998); Snyder v. Indiana Dep't of State Revenue, 723 N.E.2d 487 (Ind. Tax Ct. 2000); 26 U.S.C.S. § 61(a); 26 U.S.C.S. § 62.

Taxpayer argues that he is not subject to the legislation imposing Indiana's adjusted gross income tax because he is a "NATURAL-BORN, FREE adult Citizen* of the Indiana Republic."

II. Proposed Assessment – Adjusted Gross Income Tax.

Authority: IC 6-8.1-1-1; IC 6-8.1-3-1(a); IC 6-8.1-5-1(a).

Taxpayer maintains that he is not required to pay state income taxes because he did not file 1999 or 2000 state tax returns.

STATEMENT OF FACTS

The Department of Revenue (Department) determined that taxpayer owed additional income tax for 1999 and 2000. The Department then sent taxpayer notices of "Proposed Assessment." Taxpayer responded by stating that he did not file returns for either 1999 or 2000 and that he wished to avail himself of "whatever administrative or judicial remedies are available to dispute the alleged liabilities." In addition, taxpayer submitted an "Affidavit" setting out multiple challenges to the applicability of the state's individual income tax.

Taxpayer's response was treated as a formal protest. Taxpayer declined the opportunity to take part in an administrative hearing or to provide supplementary documentation. This Letter of Findings was prepared based upon the initial protest letter and the "Affidavit."

DISCUSSION

I. Constitutionality of Indiana Adjusted Gross Income Tax.

According to taxpayer, "Recent diligent studies have convinced [him] that he is not 'subject to' the territorially-limited 'exclusive Legislation' and its foreign jurisdiction mandated for Washington, D.C....." Taxpayer states that the federal income tax – and by extension Indiana income tax – is the result of a "shrewd and criminal Constructive Fraud... perpetrated upon America by government under counterfeit 'color of law', through apparent entrapments of 'certain ACTIVITIES (monopoly occupations) and PRIVILEGES' (other benefits) allowed by Statutory Acts or otherwise." Having detected an elaborate government plot against its own citizenry, taxpayer decided that it would be best to "REVOKE" all his previous signatures "and render them null and void except for those that I choose to have measured as being under 'TDC' (threat, duress and/or coercion) and/or 'without prejudice' (per UCC 1-207), past and now."

Taxpayer has provided a densely-written, vertigo-inducing challenge to Indiana's authority to impose an individual income tax. To support that challenge, taxpayer has cited to the "U.S. Criminal Codes," Uniform Commercial Code, United States Supreme Court case law, and various provisions of the United States Constitution.

Under the Indiana Constitution, "The general assembly may levy and collect a tax upon income, from whatever source derived, at such rates, in such manner, and with such exemptions as may be prescribed by law." Ind. Const. art. X, § 8. The Indiana Tax Court has stated that, "The constitutional legitimacy of the general assembly's decision to tax income is beyond dispute. The right to tax is a crucial attribute of sovereignty." Snyder v. Indiana Dep't of State Revenue, 723 N.E.2d 487, 488 (Ind. Tax Ct. 2000). Under that taxing authority, the General Assembly has enacted the Adjusted Gross Income Tax of 1963 (Act). IC 6-3-1-1 et seq.

The Act defines "adjusted gross income" in the case of individuals, as the term is defined in 26 U.S.C.S. § 62 with certain modifications specific to Indiana. IC 6-3-1-3.5(a). Thus "adjusted gross income" is, "in the case of an individual, gross income minus... [certain] deductions." 26 U.S.C.S. § 62. Similarly, the Act incorporates the definition of "gross income" as found in I.R.C. § 61(a). IC 6-3-1-8. Therefore, "gross income" consists of "all income from whatever source derived...." 26 U.S.C.S. § 61(a).

The Indiana General Assembly has chosen to tax the income earned by individuals and – in defining the extent of the state income tax – has incorporated provisions of the Internal Revenue Code. Taxpayer's conclusion – that he is not subject to state income tax because the federal provisions are applicable only to residents of certain federal enclaves – is not well founded and has been consistently rejected by the courts. "For seventy-five years, the Supreme Court has recognized that the sixteenth amendment authorizes a direct nonapportioned tax upon United States citizens throughout the nation, not just in federal enclaves... [and] efforts to argue otherwise have been sanctioned as frivolous." United States v. Collins, 920 F.2d 619, 629 (10th Cir. 1990) (Internal citation omitted). "Pursuant to the authority vested in Congress under the Sixteenth Amendment to impose a direct income tax on citizens and residents of the United States comprised of the 50 states and the District of Columbia, Congress enacted Title 26 of the United States Code, the Internal Revenue Code." Betz v. United States, 40 Fed. Cl. 286, 295 (Fed. Cl. 1998). "The I.R.C. applies to 'United States persons,' defined as 'citizen[s] or resident[s] of the United States.' 26 U.S.C. § 7701(a)(30)(A) (1994). In addition, the I.R.C.'s definition of 'United States' includes 'the States and the District of Columbia.' 26 U.S.C. § 7701(a)(9) (1994)." Id.

Taxpayer is of the opinion that, with the just the right combination of semantic technicalities and obscure legal references he can render himself immune from Federal and state tax liability. There is not one single Federal or state court case which supports such a fanciful notion. Wishful thinking aside, given that taxpayer received gross income (I.R.C. § 61) in 1999 and 2000, is an "individual" under IC 6-3-1-9, was a resident of Indiana for the years 1999 and 2000 (IC 6-3-1-12), and is a "taxpayer" as defined within (IC 6-3-1-15), the statutes imposing the Indiana individual income tax apply with full force to taxpayer's income as they do to every other resident of this state.

FINDING

Taxpayer's protest is denied.

II. Proposed Assessment – Adjusted Gross Income Tax.

Taxpayer argues that he is not subject to the state income tax because he did not file Indiana tax returns and that he has officially revoked his permission for anyone to prepare a tax return on his behalf.

Under IC 6-8.1-3-1(a), "The department [of revenue] has the primary responsibility for the administration, collection, and enforcement of the listed taxes." The term "listed tax" is defined at IC 6-8.1-1-1 which specifically includes "the adjusted gross income tax" as one of the Indiana's "listed taxes." As one aspect of that responsibility, the Department is required to issue a "proposed assessment" if there is reason to believe that an individual has underreported his income. "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 unpaid tax on the basis of the best information available." IC 6-8.1-5-1(a). In taxpayer's own case, the Department relied on information contained within taxpayer's W-2 and 1099 forms indicating that taxpayer had obtained income during these years. Taxpayer has done nothing which refutes or brings into question the accuracy of this data.

Taxpayer also complains that the notice of proposed assessment is not signed. It is somewhat difficult to determine the specific nature of taxpayer's grievance. Although a personalized notice of proposed assessment might have certain advantages, there is nothing in the statutes or regulations which require that a notice of proposed assessment contain a signature. It is sufficient that the document place the taxpayer on notice of a potential tax deficiency and that the taxpayer be provided with the means by which to challenge that assessment.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0120040193.LOF

LETTER OF FINDINGS: 04-0193
Indiana Adjusted Gross Income
For 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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Constitutionality of Indiana Adjusted Gross Income Tax.

Authority: Ind. Const. art. X, § 8; IC 6-3-1-3.5(a); IC 6-3-1-8; IC 6-3-1-9; IC 6-3-1-12; IC 6-3-1-15; United States v. Collins, 920 F.2d 619 (10th Cir. 1990); Betz v. United States, 40 Fed. Cl. 286 (Fed. Cl. 1998); Snyder v. Indiana Dep't of State Revenue, 723 N.E.2d 487 (Ind. Tax Ct. 2000); 26 U.S.C.S. § 61(a); 26 U.S.C.S. § 62.

Taxpayer argues that she is not subject to the legislation imposing Indiana's adjusted gross income tax because she is a "NATURAL-BORN, FREE adult Citizen* of the Indiana Republic."

II. Proposed Assessment – Adjusted Gross Income Tax.

Authority: IC 6-8.1-1-1; IC 6-8.1-3-1(a); IC 6-8.1-5-1(a).

Taxpayer maintains that she is not required to pay state income taxes because she did not file 1999 or 2000 state tax returns.

STATEMENT OF FACTS

The Department of Revenue (Department) determined that taxpayer owed additional income tax for 1999 and 2000. The Department then sent taxpayer notices of "Proposed Assessment." Taxpayer responded by stating that she did not file returns for either 1999 or 2000 and that she wished to avail herself of "whatever administrative or judicial remedies are available to dispute the alleged liabilities." In addition, taxpayer submitted an "Affidavit" setting out multiple challenges to the applicability of the state's individual income tax.

Taxpayer's response was treated as a formal protest. Taxpayer declined the opportunity to take part in an administrative hearing

or to provide supplementary documentation. This Letter of Findings was prepared based upon the initial protest letter and the "Affidavit."

DISCUSSION

I. Constitutionality of Indiana Adjusted Gross Income Tax.

According to taxpayer, "Recent diligent studies have convinced [her] that [s]he is not 'subject to' the territorially-limited 'exclusive Legislation' and its foreign jurisdiction mandated for Washington, D.C....." Taxpayer states that the federal income tax – and by extension Indiana income tax – is the result of a "shrewd and criminal Constructive Fraud... perpetrated upon America by government under counterfeit 'color of law', through apparent entrapments of 'certain ACTIVITIES (monopoly occupations) and PRIVILEGES' (other benefits) allowed by Statutory Acts or otherwise." Having detected an elaborate government plot against its own citizenry, taxpayer decided that it would be best to "REVOKE" all her previous signatures "and render them null and void except for those that I choose to have measured as being under 'TDC' (threat, duress and/or coercion) and/or 'without prejudice' (per UCC 1-207), past and now."

Taxpayer has provided a densely-written, vertigo-inducing challenge to Indiana's authority to impose an individual income tax. To support that challenge, taxpayer has cited to the "U.S. Criminal Codes," Uniform Commercial Code, United States Supreme Court case law, and various provisions of the United States Constitution.

Under the Indiana Constitution, "The general assembly may levy and collect a tax upon income, from whatever source derived, at such rates, in such manner, and with such exemptions as may be prescribed by law." Ind. Const. art. X, § 8. The Indiana Tax Court has stated that, "The constitutional legitimacy of the general assembly's decision to tax income is beyond dispute. The right to tax is a crucial attribute of sovereignty." Snyder v. Indiana Dep't of State Revenue, 723 N.E.2d 487, 488 (Ind. Tax Ct. 2000). Under that taxing authority, the General Assembly has enacted the Adjusted Gross Income Tax of 1963 (Act). IC 6-3-1-1 et seq.

The Act defines "adjusted gross income" in the case of individuals, as the term is defined in 26 U.S.C.S. § 62 with certain modifications specific to Indiana. IC 6-3-1-3.5(a). Thus "adjusted gross income" is, "in the case of an individual, gross income minus... [certain] deductions." 26 U.S.C.S. § 62. Similarly, the Act incorporates the definition of "gross income" as found in I.R.C. § 61(a). IC 6-3-1-8. Therefore, "gross income" consists of "all income from whatever source derived...." 26 U.S.C.S. § 61(a).

The Indiana General Assembly has chosen to tax the income earned by individuals and – in defining the extent of the state income tax – has incorporated provisions of the Internal Revenue Code. Taxpayer's conclusion – that she is not subject to state income tax because the federal provisions are applicable only to residents of certain federal enclaves – is not well founded and has been consistently rejected by the courts. "For seventy-five years, the Supreme Court has recognized that the sixteenth amendment authorizes a direct nonapportioned tax upon United States citizens throughout the nation, not just in federal enclaves... [and] efforts to argue otherwise have been sanctioned as frivolous." United States v. Collins, 920 F.2d 619, 629 (10th Cir. 1990) (Internal citation omitted). "Pursuant to the authority vested in Congress under the Sixteenth Amendment to impose a direct income tax on citizens and residents of the United States comprised of the 50 states and the District of Columbia, Congress enacted Title 26 of the United States Code, the Internal Revenue Code." Betz v. United States, 40 Fed. Cl. 286, 295 (Fed. Cl. 1998). "The I.R.C. applies to 'United States persons,' defined as 'citizen[s] or resident[s] of the United States.' 26 U.S.C. § 7701(a)(30)(A) (1994). In addition, the I.R.C.'s definition of 'United States' includes 'the States and the District of Columbia.' 26 U.S.C. § 7701(a)(9) (1994)." Id.

Taxpayer is of the opinion that, with the just the right combination of semantic technicalities and obscure legal references she can render herself immune from Federal and state tax liability. There is not one single Federal or state court case which supports such a fanciful notion. Wishful thinking aside, given that taxpayer received gross income (I.R.C. § 61) in 1999 and 2000, is an "individual" under IC 6-3-1-9, was a resident of Indiana for the years 1999 and 2000 (IC 6-3-1-12), and is a "taxpayer" as defined within (IC 6-3-1-15), the statutes imposing the Indiana individual income tax apply with full force to taxpayer's income as they do to every other resident of this state.

FINDING

Taxpayer's protest is denied.

II. Proposed Assessment – Adjusted Gross Income Tax.

Taxpayer argues that she is not subject to the state income tax because she did not file Indiana tax returns and that she has officially revoked her permission for anyone to prepare a tax return on her behalf.

Under IC 6-8.1-3-1(a), "The department [of revenue] has the primary responsibility for the administration, collection, and enforcement of the listed taxes." The term "listed tax" is defined at IC 6-8.1-1-1 which specifically includes "the adjusted gross income tax" as one of the Indiana's "listed taxes." As one aspect of that responsibility, the Department is required to issue a "proposed assessment" if there is reason to believe that an individual has underreported his income. "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 unpaid tax on the basis of the best information available." IC 6-8.1-5-1(a). In taxpayer's own case, the Department relied on information contained within taxpayer's W-2 and 1099 forms indicating that taxpayer had obtained income during these years. Taxpayer has done nothing which refutes or brings into question the accuracy of this data.

Taxpayer also complains that the notice of proposed assessment is not signed. It is somewhat difficult to determine the specific

nature of taxpayer's grievance. Although a personalized notice of proposed assessment might have certain advantages, there is nothing in the statutes or regulations which require that a notice of proposed assessment contain a signature. It is sufficient that the document place the taxpayer on notice of a potential tax deficiency and that the taxpayer be provided with the means by which to challenge that assessment.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040202.LOF

LETTER OF FINDINGS NUMBER: 04-0202
Sales and Use Tax
For Tax Years 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

I. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for one hundred sixty six thousand dollars ($166,000.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. Taxpayer's rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department has not received any documentation establishing that taxpayer's leasing business ever showed a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its renters to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

…

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for

insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040203.LOF

LETTER OF FINDINGS NUMBER: 04-0203
Sales and Use Tax
For Tax Years 2003

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. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for four hundred forty five thousand dollars ($445,000.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. Taxpayer's rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that the same individual signed the leasing agreement as lessor and as lessee. Also, the Department has not received any documentation establishing that taxpayer's leasing business ever showed a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its renters to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

…

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The

rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040204.LOF

LETTER OF FINDINGS NUMBER: 04-0204
Sales and Use Tax
For Tax Years 2003

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. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for three hundred sixty two thousand, two hundred and fifty dollars ($362,250.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. The rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier

certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that a single individual signed as both lessee and lessor on the leasing agreement. Combined with the rental rate far below normal market rates, this shows that taxpayer was not occupationally engaged in reselling, renting or leasing the aircraft in the regular course of its business. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

…

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040205.LOF

LETTER OF FINDINGS NUMBER: 04-0205
Sales and Use Tax
For Tax Years 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

I. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for one million, four hundred seventy four thousand and three dollars ($1,474,003.00) minus the trade in value of another aircraft at three hundred forty thousand, one hundred dollars ($340,100.00) for a final selling price of one million, one hundred thirty three thousand, nine hundred and three dollars ($1,133,903.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. Taxpayer's rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that the same individual signed the leasing agreement as lessor and as lessee. Also, the Department has not received any documentation establishing that taxpayer's leasing business ever showed a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its renters to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

…

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is

long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040206.LOF

LETTER OF FINDINGS NUMBER: 04-0206
Sales and Use Tax
For Tax Years 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 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. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for three hundred forty seven thousand, five hundred dollars ($347,500.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate

taxpayer charged for its aircraft. The rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course

of his business. The Department notes that the same individual signed the leasing agreement as lessor and as lessee. Also, the Department has not received any documentation establishing that taxpayer's leasing business ever showed a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its two owner/renter parties to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

> The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.
>
> (1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.
>
> …

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of

avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040207.LOF

LETTER OF FINDINGS NUMBER: 04-0207
Sales and Use Tax
For Tax Years 2003

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. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for two hundred fifty two thousand, five hundred seventy one dollars ($252,571.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. Taxpayer's rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided

documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that the same individual signed the leasing agreement as lessor and as lessee. Also, the Department has not received any documentation establishing that taxpayer's leasing business ever showed a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its two owner/renter parties to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

…

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid

lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040208.LOF

LETTER OF FINDINGS NUMBER: 04-0208
Sales and Use Tax
For Tax Years 2003

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. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for one hundred eight thousand, five hundred thirty dollars ($108,530.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. The rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that the same individual signed the leasing agreement as lessor and as lessee. Also, the Department has not received any documentation establishing that taxpayer's leasing business ever showed a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its two owner/renter parties to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

…

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason

to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040209.LOF

LETTER OF FINDINGS NUMBER: 04-0209
Sales and Use Tax
For Tax Years 2001 and 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 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. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of sales tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased three aircraft, but did not pay sales tax on the purchases. Taxpayer claimed that the purchases were exempt from sales tax because the aircraft were to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for sales tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased two aircraft in 2001 for one million, seven hundred thirty thousand dollars ($1,730,000.00) and four million, two hundred thousand dollars ($4,200,000.00) respectively. Taxpayer purchased one aircraft in 2002 for eleven million, eight hundred two thousand, three hundred and fifty-five dollars ($11,802,355.00). Taxpayer claimed a sales tax exemption on the purchase of all three aircraft. The Department compared a non-related aircraft rental company's rate to the rate taxpayer charged for its aircraft. The rental rates taxpayer charged its customer were far below the market rates for comparable aircraft. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. As previously explained, the rental rates were a fraction of rental rates charged by third parties for similar aircraft. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Taxpayer states that it was formed for the purpose of leasing the aircraft to charter companies and, since the charter companies would have been exempt from paying sales tax on the aircraft had they purchased it directly, that there is no tax savings involved in the transaction. The Department notes that taxpayer has not provided documentation establishing that its customer was in fact tax-exempt. Also, the Department has not received documentation establishing that the aircraft was leased or rented to any other parties. Taxpayer has not provided any other documentation concerning the use of the aircraft.

The only activity upon which the Department has documentation is the rental from taxpayer to its customer at a rental rate far below the rate charged by third parties for similar aircraft. The leasing agreements supplied to the Department were unsigned by both lessor and lessee. Again, 45 IAC 2.2-5-15 requires a taxpayer to be occupationally engaged in reselling, renting or leasing such

property in the regular course of his business. The documentation and lack thereof show that taxpayer does not qualify for this exemption. Taxpayer's claim that there are no tax savings under its arrangement is incorrect.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

> The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.
>
> (1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.
>
> …

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040248.LOF

LETTER OF FINDINGS NUMBER: 04-0248
Sales and Use Tax
For Tax Years 2003

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. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for three hundred forty thousand dollars ($340,000.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. Taxpayer's rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that the same individual signed the leasing agreement as lessor and as lessee. Also, the Department has not received any documentation establishing that taxpayer's leasing business ever showed a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its two owner/renter parties to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

…

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220040249.LOF

LETTER OF FINDINGS NUMBER: 04-0249
Corporate Income Tax
For the Year 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 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. Corporate Income Tax—Assessment

Authority: IC 6-8.1-5-1(b); IC 6-3-4-14; IC 6-3-2-2; 45 IAC 3.1-1-39; Container Corp. of America v. Franchise Tax Board, 463 U.S. 159 (1983); Wabash, Inc. v. Department of State Revenue, 729 N.E.2d 620 (Ind. Tax 2000); Sherwin-Williams Co. v. Dept. of State Revenue, 673 N.E.2d 849 (Ind. Tax 1996)

Taxpayer protests adjustment made by the Department to Taxpayer's corporate income tax return. Taxpayer protests the computation and assessment of corporate income tax by the Department based on the standard method instead of Taxpayer's computations based on the stacked method.

II. Corporate Income Tax—Assessment of Penalties

Authority: IC 6-8.1-5-1(a); IC 6-8.1-10

Taxpayer protests the assessment of penalties by the Department.

STATEMENT OF FACTS

Taxpayer is an Indiana corporation engaged in manufacturing activities inside and outside Indiana. Taxpayer filed a

consolidated corporate return including two wholly-owned subsidiaries, Sub One and Sub Two. Taxpayer, Sub One, and Sub Two calculated their consolidated Indiana adjusted gross income for the 2002 tax year using the post-apportionment method, commonly called the stacked method. The Department reviewed the return and calculated the income tax due using the pre-apportionment method, commonly called the standard method. The Department issued an adjustment and assessment for the tax due. Penalties and interest also were assessed. Taxpayer filed a protest and a hearing was held.

I. Corporate Income Tax—Assessment

DISCUSSION

Under Indiana code, tax assessments are presumed to be valid and accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). IC 6-3-4-14 affirmatively permits an affiliated group of corporations the privilege of filing a consolidated return, so long as each member company has adjusted gross income derived from Indiana sources. The filing of a consolidated return is conditioned upon all the members of the affiliated group consenting to all the provisions of federal and Indiana income tax code—including regulations promulgated by the Department. *Id*. The filing of the return is considered to be that consent. *Id*. IC 6-3-2-2 provides a three factor apportionment formula for determining income derived from Indiana sources.

IC 6-3-2-2(b) computes the apportionment of Indiana income by summing a Taxpayer's property, payroll, and sales factors—then dividing this by four, with the sales factor being double-weighted. The tax due is determined by multiplying that income by the tax rate. This is termed the standard method. However, if the standard method fails to fairly reflect Indiana sourced income, the Department may use another method that effectuates a more equitable allocation and apportionment of a taxpayer's income. *See* 45 IAC 3.1-1-39. A taxpayer may use another method—if it obtains a ruling from the Department. *Id*.

In previous years, Taxpayer has used the stacked method. Under the stacked method, the individual tax for each member company is computed—then summed to arrive at the consolidated tax amount. This varies from the standard method which combines all the member companies' factors and then computes the tax due. Taxpayer advocates that the stacked method better reflects its Indiana sourced income because that computational method better reflects the operational logistics of its member companies. Taxpayer also advocates that since it has used the stacked method in the past—with the approval of the Department—the assessment by the Department using the standard method on the 2002 return is inequitable, based on reliance.

The United States Supreme Court, the Indiana Tax court, and the Department all recognize that the standard method is the method most used by related corporations to compute their state income taxes. In Container Corp. of America v. Franchise Tax Board, 463 U.S. 159, 170 (1983), the United States Supreme Court not only affirmed the standard formula but also stated that it has become a benchmark against which other apportionment formulas are judged. The Indiana Tax Court recognizes Indiana's reliance on the standard formula. *See* Wabash, Inc. v. Department of State Revenue, 729 N.E.2d 620, 625 (Ind. Tax 2000) and Sherwin-Williams Co. v. Dept. of State Revenue, 673 N.E.2d 849, 851 (Ind. Tax 1996). The basic premise and intent of a consolidated income tax return is that the group is treated as a single corporation. Wabash, 729 N.E.2d at 626. In a consolidated return, the separate entities of the various member corporations are disregarded; the consolidated income of the entire group is reported on a single return and a single tax is paid on the total income. *Id*. Based on this, great deference and weight is given to using the standard method. Deviations from the standard method must be justified.

45 IAC 3.1-1-39 requires a Taxpayer to acquire a ruling permitting the use of different formula which more fairly reflects its income from Indiana sources. Taxpayer asserts that the stacked method used by it was expressly reviewed and accepted by the Department when Taxpayer was audited for the tax years 1993 through 1998. Taxpayer adds that since that audit, no substantial changes in operations have occurred. Based on these facts, Taxpayer reasonably could have concluded that the Department had authorized Taxpayer to use the stacked method. But it now is stated plainly that Taxpayer was and is on notice that it will be required to compute its tax liabilities using the standard method—unless Taxpayer secures a ruling from the Department to use an alternative method.

FINDING

Taxpayer's protest is sustained. Taxpayer's return for 2002 is accepted using the computations under the stacked method. The assessment was issued on May 3, 2004. This is the date that Taxpayer was placed on notice that the standard method is the required computational method for a consolidated return—unless a ruling is secured by Taxpayer from the Department to use an alternative method.

II. Corporate Income Tax—Assessment of Penalties

DISCUSSION

Under IC 6-8.1-5-1(a), the amount of the assessment is considered a tax payment not made by the due date and is subject to IC 6-8.1-10 concerning the imposition of penalties and interest. Because Taxpayer is sustained on the protest to the assessment, the penalties issue is moot.

FINDING

Taxpayer's protest is sustained—based on being a moot issue.

DEPARTMENT OF STATE REVENUE

0420040250.LOF

LETTER OF FINDINGS NUMBER: 04-0250
Sales and Use Tax
For Tax Years 2003

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. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for three hundred forty thousand dollars ($340,000.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. Taxpayer's rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that the same individual signed the leasing agreement as lessor and as lessee. Also, the Department has not received any documentation establishing that taxpayer's leasing business ever showed a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its two owner/renter parties to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

…

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040257.LOF

LETTER OF FINDINGS NUMBER: 04-0257
Sales and Use Tax
For Tax Years 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 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. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for one million, three hundred seventy seven thousand, seven hundred twenty four dollars ($1,377,724.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. Taxpayer's rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that the same individual signed the leasing agreement as lessor and as lessee. Also, the Department has not received any documentation establishing that taxpayer's leasing business ever showed a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its renters to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

> The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.
>
> (1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.
>
> …

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no

influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040258.LOF

LETTER OF FINDINGS NUMBER: 04-0258
Sales and Use Tax
For Tax Years 2004

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. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for two hundred sixty thousand dollars ($260,000.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. Taxpayer's rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that the same individual signed the leasing agreement as lessor and as lessee. Also, the Department has not received any documentation establishing that taxpayer's leasing business ever showed a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its renters to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

…

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220040251.LOF

LETTER OF FINDINGS: 04-0251
Indiana Corporate Income Tax
For the Years 1994 to 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 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 Indiana Adjusted Gross Income Tax and Gross Income Tax.

Authority: U.S. Const. art. I, § 8, cl. 3; U.S. Const. amend. XIV, § 8; IC 6-2.1-2-2; IC 6-3-1-1 et seq.; IC 6-3-2-2(a); 45 IAC 1-1-51;

45 IAC 3.1-1-55; Quill Corp. v. North Dakota, 504 U.S. 298 (1992); Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977); Int'l Harvester Co. v. Wisconsin Department of Taxation, 322 U.S. 435 (1944); Wheeling Steel Corp. v. Fox, 298 U.S. 193 (1936); Gregory v. Helvering 293 U.S. 465 (1935); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Indiana Dept. of State Revenue v. Bethlehem Steel Corp., 639 N.E.2d 264 (Ind. 1994); Hoosier Energy v. Dept. of State Revenue, 572 N.E.2d 481 (Ind. 1991); Geoffrey, Inc. v. South Carolina Tax Commission, 437 S.E.2d 13 (S.C. 1993); Lanco, Inc. v. Dir., Div. of Taxation, No. 005329-97, 2003 N.J. Tax LEXIS 18; Del. Code Ann. tit. 30 § 1902(b)(8).

Taxpayer argues that the royalties it earned from licensing intellectual property were not subject to Indiana corporate income tax.

II. Apportionment Formula.

Authority: IC 6-3-2-1(b); IC 6-3-2-2(b); IC 6-3-2-2(c); IC 6-3-2-2(l); 45 IAC 3.1-1-39.

Taxpayer states that if it is subject to the Indiana's adjusted gross income tax, the audit's application of a single factor apportionment formula was erroneous because it distorted the amount of taxpayer's Indiana adjusted gross income.

III. Ten-Percent Negligence Penalty.

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

Taxpayer requests that the Department of Revenue (Department) exercise its discretion to abate the ten-percent negligence penalty made against taxpayer's additional corporate income tax assessment.

STATEMENT OF FACTS

Taxpayer is a Delaware company in the business of licensing intellectual property consisting of trade marks and service marks. Taxpayer is owned by a retail chain store which conducts business nationwide including retail locations within Indiana. The intellectual property originally belonged to the retail chain store but was transferred to taxpayer by means of an I.R.C. § 351 tax free exchange. In return for receiving ownership of the intellectual property, the retail chain store received 100 percent of the taxpayer's stock.

Thereafter, taxpayer and the retail chain store entered into a "Licensing Agreement" which enabled the retail chain store to continue use of the intellectual property it had previously owned. In return, the retail chain store paid taxpayer royalties based upon a percentage of net sales of products sold bearing the trademarks. The retail chain store paid approximately 3 percent of its net sales to taxpayer. The royalties were paid to taxpayer by means of an electronic fund wire transfer. Once taxpayer received the royalties, it loaned the money back to the retail chain store. Taxpayer loaned the money by means of an electronic fund transfer.

According to taxpayer, it also received royalties from "unrelated third parties such as joint ventures and franchisees."

Taxpayer did not file Indiana corporate income tax returns during the periods of time at issue. The Department of Revenue conducted an audit review of taxpayer's business records and found that because taxpayer was licensing the intellectual property for use within Indiana and because it received money for doing so, taxpayer should have been paying corporate income tax on that money. Accordingly, the Department sent taxpayer notices of "Proposed Assessment" covering 1994 to 2000. Taxpayer disagreed with the proposed assessments and submitted a protest to that effect. An administrative hearing was conducted during which taxpayer explained the basis for its protest. This Letter of Findings results.

DISCUSSION

I. Applicability of the Indiana Adjusted Gross Income Tax and Gross Income Tax.

The audit found that Indiana is the business situs of taxpayer's intellectual property and that income derived from the use of the intellectual property within this state constitutes Indiana source income properly taxable to the state of the Indiana. Taxpayer disagrees pointing out that it has no employees within Indiana and does not own tangible or intangible property within the state. Taxpayer argues that the audit's position is invalid because the proposed assessments allegedly violate the Due Process and Commerce Clauses of the United States Constitution.

A. Adjusted Gross Income Tax.

Indiana imposes an adjusted gross income tax on income derived from sources within the state. The adjusted gross income tax, IC 6-3-1-1 et seq., is an apportioned tax specifically designed to reach income derived from interstate transactions. Indiana Dept. of State Revenue v. Bethlehem Steel Corp., 639 N.E.2d 264, 266 n. 4 (Ind. 1994). The legislature has defined "adjusted gross income" as follows:

> (1) income from real or tangible property located in this state; (2) income from doing business in this state; (3) income from a trade or profession conducted in this state; (4) compensation for labor or services rendered within this state; and (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter. IC 6-3-2-2(a).

In order for Indiana to tax the income derived from an intangible, the intangible – such as taxpayer's intellectual property – must have acquired a "business situs" within the state. 45 IAC 3.1-1-55 states that "[t]he situs of intangible personal property is the commercial domicile of the taxpayer... unless the property has acquired a 'business situs' elsewhere. 'Business situs' is the place at which intangible personal property is employed as capital; or the place where the property is located if possession and control of the

property is localized in connection with a trade or business so that substantial use or value attaches to the property."

The Department concludes that taxpayer's intellectual property has acquired a "business situs" within Indiana. Taxpayer licenses the intellectual property for the exclusive use by the retail chain store which sells goods bearing taxpayer's trade and service marks. Based upon the parties' agreement and the independent valuation of the value of these marks, it is evident that the parties attach significant value to the trade and service marks. As the independent valuation states, "The use of the [] trade names would provide entry into the retail [] market, which could not be achieved without the acquisition of a well-known name." Elsewhere, the valuation noted that, "The [] trade name is the leader in the retail [] market and a stronger name than the franchise names employed for comparison."

The value taxpayer derives from the exploitation of the intellectual property is attributable entirely to activities occurring within the state of Indiana. The value of the intellectual property to the taxpayer consists of the ability to "place" that intellectual property within the state and to derive the consequent benefits attributable entirely to the intellectual property's Indiana business situs. As the regulation itself states, "'Business situs' is the place at which [the] intangible personal property is employed as capital...." 45 IAC 3.1-1-55. The place at which "value attaches to the [intellectual] property" is within the state of Indiana. Id. The significant value attached to these properties derives entirely from the ability to assign the properties for use within the state. Taxpayer reaps benefits in the form of royalties directly attributable to retail sales made to Indiana customers.

However, taxpayer interposes several constitutional arguments which would have the effect of limiting Indiana's ability to tax the income attributable to the intellectual property. Taxpayer states that "[t]he imposition of taxation on [taxpayer] as a foreign corporation violates the Commerce Clause and the Due Process Clause of the U.S. Constitution." Taxpayer is correct in its assertion that both the Due Process Clause, U.S. Const. amend. XIV, § 8, and the Commerce Clause, U.S. Const. art. I, § 8, cl. 3, require that there exist a minimum connection between a state and the object of the tax and that those constitutional requirements must be met before Indiana can exercise taxing authority over taxpayer's income.

In Quill Corp. v. North Dakota, 504 U.S. 298, 306 (1992), the Supreme Court stated that "[t]he Due Process Clause 'requires some definite link, some minimum connection between a state and the person, property or transaction it seeks to tax.'" However, the Court concluded that the due process requirement is satisfied "if a foreign corporation purposefully avails itself of the benefits of an economic market in the forum state.... even if the [the taxpayer] has no physical presence in the state." Id. at 307. Although taxpayer's physical existence – measured by its business location, employees, and corporate existence – may be confined within Delaware's boundaries, taxpayer has directed its activities at the residents of Indiana and at the benefits conferred by Indiana in making it possible for taxpayer to conduct business within the state. Taxpayer has not been unwillingly brought into contact with Indiana by the unforeseen and unilateral actions of an independent third-party. To the contrary, there is every indication that taxpayer directed its activities toward licensing the intellectual property to the retail chain store and received substantial income from the use of the intellectual property within the state. The fact that Indiana confers protection, benefits, and opportunities upon taxpayer is apparent from taxpayer's simple ability to derive income from conducting business within the state. Therefore, under the standards set out in the Quill decision, the Due Process Clause does not prevent Indiana from taxing the income derived by taxpayer in availing itself of the Indiana business situs.

Taxpayer argues that Indiana may not tax its income by virtue of the protections afforded under the Commerce Clause. In Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 279 (1977), the Supreme Court outlined a four-part test for determining whether a state's exercise of its taxing authority is offensive to the Commerce Clause. The Court stated the exercise of the state's taxing authority would survive a constitutional challenge "when the tax is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State." Id. Taxpayer argues that the proposed tax violates the Commerce Clause because taxpayer does not have a "substantial nexus" with Indiana and because the tax is not "fairly apportioned."

Taxpayer claims that it does not have a "substantial nexus" with Indiana because it is not commercially domiciled in Indiana, does not have a business situs in Indiana, conducts no business in Indiana, derives no services from Indiana, and has no employees or property within the state. However, as the court in Geoffrey, Inc. v. South Carolina Tax Commission, 437 S.E.2d 13, 23 (S.C. 1993), *cert. denied,* 510 U.S. 992 (1993), noted, "It is well settled that the taxpayer need not have a tangible, physical presence in a state for income to be taxable there. The presence of intangible property is sufficient alone to establish nexus." That determination echoed the standard set out by the Supreme Court in Int'l Harvester Co. v. Wisconsin Department of Taxation, 322 U.S. 435, 441-442 (1944) when the Court stated that, "A state may tax such part of the income of a non-resident as is fairly attributable either to property located in the state or to events or transactions which, occurring there, are subject to state regulation and which are within the protection of the state and entitled to the numerous other benefits which it confers." (*See also* Wheeling Steel Corp. v. Fox, 298 U.S. 193 (1936) "The rule that the taxable situs of intangibles is at the technical domicile of the owner is but a mere fiction, and will not be followed when the fact is clear that the intangible property has a situs elsewhere.") The contractual relationship between taxpayer and Indiana parent company creates the requisite "substantial nexus" with Indiana necessary for Indiana to subject taxpayer to its adjusted gross income tax. By virtue of that licensing agreement, the retail chain store uses the intellectual property to enhance the value of the products sold within the state and to generate the sales which form the basis upon which the taxpayer receives a stream

of royalty income.

In addition, the taxpayer argues that the proposed tax violates the Commerce Clause because the tax is not "fairly apportioned." Taxpayer apparently argues that the income at issue should "apportioned" back to the state of Delaware. As the court in Hoosier Energy v. Dept. of State Revenue, 572 N.E.2d 481, 485 (Ind. 1991) stated, "As a general proposition, a state tax on interstate commerce must be fairly apportioned to prevent excessive taxes on such sale as each state takes its bite out of the interstate transaction as it passes through each taxing state." Therefore, in order for a tax to meet the Complete Auto "fairly apportioned" requirement, the state must demonstrate that the taxpayer's income is not consumed by multiple states exercising successive taxing authority over the same income in a manner which offends the Commerce Clause. However, taxpayer has presented no evidence indicating that the income is in anyway potentially subject to multiple taxation. The only other state which could conceivably exercise taxing authority over the income is Delaware, taxpayer's putative business location. There is simply no indication that Delaware has or will subject the income to its taxing authority. To the contrary, Del. Code Ann. tit. 30 § 1902(b)(8) would seem to specifically exempt income derived from intellectual property from the state's taxing authority. The Delaware statute states, in relevant part that:

> The following corporations shall be exempt from taxation under this chapter: (8) Corporations whose activities within this State are confined to the maintenance and management of their intangible investments... and the collection and distribution of the income from such investments.... For purposes of this paragraph, "intangible investments" shall include, without limitation, investments in... patents, patent applications, trademarks, trade names and similar types of intangible assets....

In the absence of any indication that taxpayer's income would be subject to successive taxation by multiple states, taxpayer's "fairly apportioned" argument must fail. To the contrary, the evidence supports the conclusion that the imposition of the state's adjusted gross income tax meets the apportionment requirements set forth in Complete Auto.

Taxpayer cites to Lanco, Inc. v. Dir., Div. of Taxation, No. 005329-97, 2003 N.J. Tax LEXIS 18, for supporting its assertion that a state may not constitutionally subject an out-of-state corporation to that state's income tax where the out-of-state corporation has no physical presence in the state and derives income only pursuant to a license agreement with another corporation that conducts a retail business there. Taxpayer correctly points out that the New Jersey Tax Court "determine[d] that the state may not assert nexus, absent physical presence against a corporation that receives income from the use of trademarks or other intangibles employed in a New Jersey business conducted by an affiliated corporation." Id. at *34. However, the Department – unlike the New Jersey Tax Court – is unwilling to overlook the issues of common ownership and the issues concerning the manner and means by which ownership of the intellectual property was transferred from the retail chain store to taxpayer. *See* Lanco at *2. Taxpayer is paid millions of dollars in royalties by retail chain store for no apparent purpose. There is no indication that taxpayer does anything to earn these royalties. Taxpayer loans the royalties back to retail chain store with no apparent expectation of repayment. The stock exchange agreement, the licensing agreement, the Delaware incorporation, the royalty payments, and the on-going "loans" of the royalties, constitute no more than an elaborate ruse intended to minimize the retail chain store's state tax liability. In such instances, the Department is entitled to overlook the artifice and determine the business and practical realities of the parties' relationship and the tax consequences attendant upon that relationship. Gregory v. Helvering 293 U.S. 465, 469 (1935); *See also* Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert denied,* 338 U.S. 955 (1950).

Accordingly, because taxpayer's intellectual property has acquired an Indiana "business situs," and because Indiana's exercise of taxing authority over the income derived from that property does not offend either the Due Process Clause or the Commerce Clause, taxpayer's income is properly subject to the state's adjusted gross income tax scheme.

B. Gross Income Tax.

In addition to the adjusted gross income tax, Indiana imposes a tax, known as the "gross income tax," on the "taxable gross income" of a taxpayer who is a resident or domiciliary of Indiana and on the taxable gross income from Indiana sources by a taxpayer who is not a resident or domiciliary of Indiana. IC 6-2.1-2-2.

Under the regulations governing the gross income tax, "taxable gross income" includes income that is derived from "intangibles." 45 IAC 1-1-51. The term "intangibles" includes:

> notes, stocks in either foreign or domestic corporations, bonds, debentures, certificates of deposit, accounts receivable, brokerage and trading accounts, bills of sale, conditional sales contracts, chattel mortgages, "trading stamps," final judgments, leases, royalties, certificates of sale, choses in action *and any and all other evidences of similar rights capable of being transferred, acquired or sold.* (*Emphasis added*). Id.

In order for Indiana to impose the gross income tax on income derived from taxpayer's intangibles, the Department must determine that the income is derived from a "business situs" within the state. Id. The regulation states that taxpayer has established a "business situs" within the state "[i]f the intangible or the income derived therefrom forms an integral part of a business regularly conducted at a situs in Indiana...." Id. Once the taxpayer has established a "business situs" within the state, "and the intangible or the income derived therefrom is connected with that business, either actually or constructively, the gross receipts of those intangibles will be required to be reported for gross income tax purposes." Id.

For purposes of the state's gross income tax, the Department concludes that income derived from the taxpayer's licensing of the intellectual property, is income derived from a "business situs" within Indiana and is properly subject to the state's gross income

tax scheme. The intellectual property is exclusively licensed to the retail chain store. The intellectual property is "localized" within the state in the sense that the Indiana chain store employs the property to enhance the value of goods sold within the state to Indiana customers. Taxpayer would derive no income from the intellectual property but for the fact that the intellectual property was licensed for use within Indiana and then actually used within Indiana in conjunction with retail sales occurring within the state.

Accordingly, because the intangible intellectual property has acquired a business situs within the state and because the income at issue is "connected with that business, either actually or constructively," the income is subject to the state's gross income tax.

FINDING

Taxpayer's protest is respectfully denied.

II. Apportionment Formula.

Taxpayer sets out a second challenge to the proposed assessments by challenging the manner in which the audit apportioned taxpayer's income.

Indiana imposes a tax on a corporation's adjusted gross income derived from sources within Indiana. IC 6-3-2-1(b). Where the corporation earns business income from sources within the state and from sources outside the state, the adjusted gross income is determined by an apportionment formula. IC 6-3-2-2(b). The apportionment formula multiplies the corporation's total business income by a fraction the numerator of which is a property factor plus a payroll factor plus a sales factor, and the denominator of which is three. Id. "The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year...." IC 6-3-2-2(c).

Since taxpayer did not prepare Indiana income tax returns or report Indiana income, the audit prepared returns on taxpayer's behalf. According to the audit, this "had to be calculated using information supplied by the taxpayer." The audit report indicated that taxpayer's "rent and payroll [] never exceeded $2000... [that] the rent and payroll [was] not related to the earnings of the royalty income, and therefore have not been included in the apportionment calculation."

Taxpayer objects to the audit's methodology suggesting that the audit's apportionment methodology unduly distorted the amount of taxpayer's adjusted gross income. However, taxpayer has provided no alternative other than to maintain that, "the taxes asserted in the notices are out of all appropriate proportion to, and do not fairly represent the business, if any, conducted by [taxpayer] in Indiana and therefore are unconstitutional." Taxpayer insists that, "An alternative apportionment formula must be applied to reflect a less distortive income apportionment."

IC 6-3-2-2(l) provides as follows:

> If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable;
>
> (1) separate accounting;
>
> (2) the exclusion of any one (1) or more of the factors;
>
> (3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or
>
> (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

The Department has stated that, "All corporations subject to the allocation and apportionment provisions of IC 6-3-2-2(b) to (n) shall apportion their business income by use of the 3-factor formula... unless the taxpayer obtains a ruling which permits, or the Department requires, the use of a different formula which more fairly reflects its income from Indiana sources." 45 IAC 3.1-1-39.

The audit departed from the standard three-factor apportionment formula when it chose to eliminate consideration of the property and payroll factors. The audit did so because the amounts of the taxpayer's rental and payroll expenses never exceeded $2,000 during the three audited years and because the identifiable rental and payroll expenses were unrelated to the apportioned royalty income. Because the payroll and property expenses were negligible in relation to the amounts of royalty income and because the expenses were unrelated to that royalty income, the audit was correct in excluding the payroll and property factors from the standard apportionment calculation because including the two factors would not have accurately reflected taxpayer's Indiana sourced royalty income.

FINDING

Taxpayer's protest is respectfully denied.

III. Ten-Percent Negligence Penalty.

Taxpayer argues that the Department should exercise its discretion to abate the ten-percent negligence penalty imposed pursuant to IC 6-8.1-10-2.1(a). Taxpayer maintains that the Department has been inconsistent in its stance on taxation of income attributable to intellectual property.

IC 6-8.1-10-2.1(d) provides potential relief from imposition of the penalty. The statute states that if a person – subject to the negligence penalty imposed under IC 6-8.1-10-2.1(a) – can demonstrate that the failure to file a tax return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay a 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 the "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, 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.

Even given taxpayer's argument that issues related to the taxation of income received from intellectual property is an unsettled area of Indiana law, the Department is unable to agree that taxpayer's decision not to file Indiana tax returns was an exercise in "ordinary business care and prudence...." 45 IAC 15-11-2(c). Taxpayer's decision to report none of the Indiana royalties as Indiana income or to obtain direction from the Department concerning the taxability of this income is not suggestive of the "reasonable care, caution, or diligence, as would be expected of an ordinary reasonable taxpayer." 45 IAC 15-11-2(b).

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0420040271.LOF

LETTER OF FINDINGS NUMBER: 04-0271
Sales Tax
For the Year 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 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

Sales Tax—Assessment; Exemption for Rental and Leasing

Authority: IC 6-8.1-5-1(b); IC 6-2.5-2-1; IC 6-2.5-9-6; IC 6-2.5-5; IC 6-2.5-5-8; IC 6-2.5-4-10(a); IC 6-2.5-8-1; IC 6-2.5-9-2; IC 6-2.5-8-1(b); Panhandle Eastern Pipeline Company v. Dept. of Revenue, 741 N.E.2d 816, 818 (Ind. Tax 2001);

Taxpayer protests the assessment of sales or use tax on the purchase of an aircraft Taxpayer asserts is being used for rental or leasing.

STATEMENT OF FACTS

On April 12, 2002, Taxpayer filed Articles of Incorporation with the Indiana Secretary of State to register a For-Profit Domestic Corporation. The corporate name chosen included the words "Leasing Company, Inc." On April 15, 2002, Taxpayer purchased a 1978 Cessna 421C. Four months later on August 12, 2002, the Compliance Division—Aeronautics of the Indiana Department of Revenue sent a letter to Taxpayer informing Taxpayer that the aircraft was not properly registered with the State of Indiana—which is required to be done within 31 days after purchase. The Department enclosed an application for the benefit of Taxpayer to complete. Taxpayer completed and submitted Form 7695, **Application for Aircraft Registration or Exemption**. Taxpayer elected exemption from sales/use tax: **Rental or Lease to others**. Two months later, on October 2, 2002, Taxpayer submitted an application for a retail merchants number.

Sixteen months later on February 25, 2004, the Compliance Division sent a letter to Taxpayer disallowing the sales/use tax exemption on the basis that Taxpayer had remitted a minimal amount or no sales/use tax. Taxpayer protested the assessment. Compliance sent a reply letter requesting specific information and documentation to substantiate the protest. Compliance reminded Taxpayer that the supporting documentation was required to have been submitted with the protest. Taxpayer later submitted the documentation. On June 9, 2004, the protest was referred to the Legal Division. On September 1, 2004 a hearing was set for November 30, 2004. That hearing was held and this Letter of Findings results.

DISCUSSION

All tax assessments are presumed to be accurate. The taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). Indiana retail transactions are subject to the imposition of an excise tax—known as the state gross retail tax. IC 6-2.5-2-1. Sales/use tax is due on the purchase of an aircraft. *See* IC 6-2.5-9-6. Exemptions to sales/use tax exist. *See* IC 6-2.5-5. One exemption is property acquired for resale, rental, or leasing in course of business. IC 6-2.5-5-8. However, tax exemption statutes are construed strictly in favor of taxation. Panhandle Eastern Pipeline Company v. Dept. of Revenue, 741 N.E.2d 816, 818 (Ind. Tax 2001). To prevail, Taxpayer must prove that it meets the requirements of IC 6-2.5-5-8.

IC 6-2.5-4-10(a) states that a person is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person. IC 6-2.5-8-1 states that a retail merchant may not make a retail transaction in Indiana, unless he has

applied for a registered retail merchant's certificate. A merchant who makes a retail transaction without having applied for and obtaining a registered retail merchant's certificate commits a class B misdemeanor. IC 6-2.5-9-2. Taxpayer's corporate name includes the words **Leasing Company, Inc**. While corporate names may vary—the use of these terms is an indicator of Taxpayer's business intentions. However, that requires substantiation—a name alone is not proof of business dealings.

Days after registering as a For-Profit corporation, Taxpayer purchased an aircraft for $335,000. Taxpayer's corporate agent indicated at the hearing that he is active in many business enterprises and has been in business for many years. The agent further indicated that Taxpayer is affiliated with other businesses that agent operates. Such testimony confirms that Taxpayer's corporate agent is a knowledgeable and successful entrepreneur. As such, Department has to presume from the agent's statements that Taxpayer would promptly secure a Retail Merchants Certificate if leasing is to be the business enterprise.

As well, it is to be expected that Taxpayer also would promptly and diligently register the aircraft. But this did not happen. Taxpayer had to be prompted by the Department to register the aircraft—four months after purchasing it. It is fair to presume that the common Indiana citizen is aware that a vehicle is required to be registered—especially an aircraft that represents a major investment for a business. The Department has received no evidence as to why a corporate agent—who states he is a knowledgeable and successful business person—failed to secure a Retail Merchants Certificate in a timely manner. IC 6-2.5-8-1(b) imposes a modest $25 fee to obtain one. The six-month delay in obtaining a Retail Merchants Certificate and the four month delay in registering the aircraft are strong evidence that—despite the corporate name—Taxpayer was not diligent in establishing an intended purpose for the use of the aircraft as rental or leasing.

Taxpayer did secure a lease for the aircraft on May 28, 2002. At the time of the lease, Taxpayer had not registered the aircraft nor did Taxpayer have a Retail Merchants Certificate. This lease lasted for one year—terminating in June 30, 2003. The lease was terminated because Lessee stated that the aircraft was not being used enough to make it financially beneficial. An investigation of documentation provided by Taxpayer indicates that Lessee flew the aircraft infrequently. Documentation provided by Taxpayer also indicates that the aircraft was used by the corporate agent and Taxpayer's affiliated businesses several times after the purchase.

At the hearing, Taxpayer stated that the reason the aircraft was purchased was to lease it to Lessee. Taxpayer also stated that because of maintenance requirements, bad weather, and a downturn in the market for this type of aircraft, Taxpayer had a difficult time finding business. Taxpayer also stated that it attempted to sell the aircraft—to no avail. Taxpayer recently secured several possibly lucrative leases. But all of this is unpersuasive because the Department has requested Taxpayer to provide detailed documentation to substantiate the use of the aircraft. The hearing officer asked Taxpayer to provide a narrative marrying the assertions made by Taxpayer to the supporting documentation. This request was stated to Taxpayer at the hearing and a letter mailed after the hearing. Specifically, the Taxpayer was asked to provide documentation of the attempt to sell the aircraft. None was provided. The case file is replete with duplicate copies of documents. But the scattered pieces do not create a completed picture of Taxpayer's business intentions to lease.

A seasoned and experienced corporate agent would be diligent in securing necessary documentation and registrations so as to demonstrate business intentions. Taxpayer had to be prompted by the Department to register the aircraft—four months after the purchase. Additionally, Taxpayer claimed a sale/use tax exemption for rental or lease to others on the registration application, **Form 7695**—but did not supply a Retail Merchants Number to substantiate a claim for exemption. It was two more months before Taxpayer had a Retail Merchants Certificate—making it six months after the purchase of the aircraft before Taxpayer establishes any legal intention to attempt to lease or rent the aircraft. Form and substance work to complement each other in showing intention. Aircraft registration is required to be filed within 31 days after purchase. The reason for this time limit is to have Taxpayer declare the intention of a purchase contemporaneous to the purchase—not four or six months later. The General Assembly clearly and definitively has stated its intention concerning registration of aircraft and payment of sales/use tax. IC 6-2.5-9-6 states that the state may not register an aircraft unless the person obtaining the registration:

(1) presents proper evidence, prescribed by the Department of Revenue, showing that the sales/use taxes have been paid or that sales/use taxes are inapplicable because of an exemption; or

(2) files the proper form and pays the sales/use taxes due on the aircraft.

A person who purchases an aircraft is required to pay the sales/use taxes to the Department of Revenue. A person who knowingly fails to remit all or part of the sales/use taxes that are due commits a Class A misdemeanor. The form and proper evidence proscribed by the Department is Form 7695, **Application for Aircraft Registration or Exemption**.

While Taxpayer may have had an intention to lease the aircraft at some time after the purchase—Taxpayer was not able to lease the aircraft according to the revenue statutes promulgated by the General Assembly because Taxpayer had neither registered the aircraft nor obtained a Retail Merchants Certificate until prompted to do so. For the first six months, Taxpayer was operating the aircraft for its own use—as according to the tax statutes.

FINDING

Taxpayer's protest is denied

DEPARTMENT OF STATE REVENUE

42-20040273.LOF

LETTER OF FINDINGS NUMBER: 04-0273
IFTA
For The Period: 1999-2002

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 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. IFTA: Sufficiency of documentation

Authority: IFTA R1210.300; IC 6-8.1-5-1(b)

The taxpayer protests the proposed assessments; penalty and interest are also protested.

STATEMENT OF FACTS

The taxpayer is a contract hauler, hauling products provided by brokers. More facts will be provided as needed below.

I. IFTA: Sufficiency of documentation

DISCUSSION

In correspondence the taxpayer stated:

I was leased to company's that withheld funds to pay fuel taxes all trip miles and driver logs were sent to company to settle weekly pay.

And the taxpayer stated, "[a]ll plates were purchased through company…." and further that "[w]hen leaving a company you had to turn in all permits & plates. I purchased plates in 2000 because [Company H] did not have plate program." Finally, the taxpayer states that it will "bring documentation to support" its contention that it "owe[s] no taxes." The taxpayer says it will "get copy's of leases fuel receipts and mileage reports."

Prior to the hearing date, the taxpayer faxed to the Department various documentation. Among the documents was a letter, dated September 9, 2004, from Company C which stated in part "[Taxpayer's] fuel tax was included in [Company C]'s Oklahoma IFTA returns for the periods 1/1/1999 through 12/31/2002." The letter does not indicate which trucks were purportedly covered, nor whether there was a lease agreement and what the terms of any lease were. Also among the faxed items was a "Lease Agreement" between the taxpayer and Company B (dated October 9, 2000). The faxed lease is only a portion, and does not appear to indicate who pays the taxes.

The taxpayer also faxed a copy of part of an "Independent Contractor's Lease Agreement" between it and Company H (lease dated March 20, 2000). The Auditor has already reviewed the March 20, 2000, lease. The Auditor took into account that since the lease specified a fuel tax chargeback, that Company H is assumed to bear the reporting responsibility. Thus the taxpayer has already received any credit for this specific issue and the submitted information has already been accepted.

On the day of the hearing the taxpayer also faxed to the Department a fax that he had received from Company B. The fax stated the following (from Company B):

I am not aware of what type of contract you had with us, but whatever type of contract existed one of two things would have happened:

1. Deducted your portion of fuel taxes from your settlement and then paid these taxes on your behalf.
2. Agreed to pay your taxes and did not deducted them from your settlements.

Either way, we would have paid your fuel taxes during your owner operator contract period with us.

Again, the same problems hold—the vehicles at issue are not specified, and the actual lease language is not shown.

Under IFTA R1210.300, in relevant part:

The assessment made by a base jurisdiction pursuant to this procedure shall be presumed to be correct and, in any case where the validity of the assessment is questioned, the burden shall be on the licensee to establish by a fair preponderance of evidence that the assessment is erroneous or excessive.

And the Indiana Code 6-8.1-5-1(b) states in part:

The 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 taxpayer has not met its burden of proof. The taxpayer also protested any "penalty or interest on the audit…." Taxpayer did not develop any argument regarding the penalty and interest, and is thus also denied regarding the penalty and interest.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040288.LOF

LETTER OF FINDINGS NUMBER: 04-0288
Sales and Use Tax
For Tax Years 2003

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. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for two hundred eighty four thousand, five hundred dollars ($284,500.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. Taxpayer's rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that the same individual signed the leasing agreement as lessor and as lessee. Also, the Department has not received any documentation establishing that taxpayer's leasing business ever showed a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its two owner/renter parties to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

…

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040289.LOF

LETTER OF FINDINGS NUMBER: 04-0289
Sales and Use Tax
For Tax Years 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 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. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for four hundred ten thousand, seventy dollars ($410,070.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. Taxpayer's rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that the same individual signed the leasing agreement as lessor and as lessee. Also, the Department has not received any documentation establishing that taxpayer's leasing business ever showed a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its renters to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

> The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.
>
> (1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.
>
> …

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no

influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040290.LOF

LETTER OF FINDINGS NUMBER: 04-0290
Sales and Use Tax
For Tax Years 2003

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. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for two hundred ninety two thousand, five hundred dollars ($292,500.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. Taxpayer's rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that the same individual signed the leasing agreement as lessor and as lessee. Also, the Department has not received any documentation establishing that taxpayer's leasing business ever showed a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its renters to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

…

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040291.LOF

LETTER OF FINDINGS NUMBER: 04-0291
Sales and Use Tax
For Tax Years 2003

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. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-

27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for one hundred seventy thousand dollars ($170,000.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. The rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that the same individual signed the leasing agreement as lessor and as lessee. Also, the Department has not received any documentation establishing that taxpayer's leasing business ever showed a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its two owner/renter parties to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

…

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated

by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040292.LOF

LETTER OF FINDINGS NUMBER: 04-0292
Sales and Use Tax
For Tax Years 2002 and 2003

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. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of sales tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for sales tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for four million, two hundred thousand dollars ($4,250,000) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate of one-thousand, nine-hundred and twenty-five dollars per hour ($1,925/hour), for the same type of aircraft, to the five-hundred dollars per hour ($500/hour) rate taxpayer charged for its aircraft. The signatory for both lessee and lessor on the leasing agreement were the same individual, and the rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Taxpayer paid sales tax on the initial lease payment by its customer, but filed "zero" sales/use tax returns from May 2002 to November 2002 and failed to file any return at all for December 2002 and January 2003. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. Taxpayer's customer reported that it used the aircraft three or four times, which the Department considered insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The only rentals or leasing the Department learned of was three times to taxpayer's only customer. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Taxpayer states that it was formed for the purpose of leasing the aircraft to charter companies and, since the charter companies would have been exempt from paying sales tax on the aircraft had they purchased it directly, that there is no tax savings involved in

the transaction. The Department notes that taxpayer has not provided documentation establishing that its customer was in fact tax-exempt. Also, the Department has not received documentation establishing that the aircraft was leased or rented to any other parties. As determined by reviewing all documentation submitted to the Department, the aircraft was leased to one customer who used the aircraft a total of three or four times. Taxpayer has not provided any other documentation concerning the use of the aircraft.

The aircraft cost $4.25 million dollars and the only lease/rental activity mentioned, let alone documented, is the three uses of the aircraft by the customer. Again, 45 IAC 2.2-5-15 requires a taxpayer to be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Taxpayer clearly does not qualify for this exemption. Taxpayer's claim that there are no tax savings under its arrangement is incorrect.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. It is worth noting that the amount the Department used as a reference rental rate by a third party for a similar aircraft ($1925) did not include a pilot and copilot in that rental agreement. For the plane with a pilot and copilot, the third party charged two thousand, four hundred dollars an hour ($2400/hour).

45 IAC 2.2-4-27(d) states in relevant part:

> The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.
>
> (1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.
>
> …

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It

is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0320040293.LOF

LETTER OF FINDINGS NUMBER: 04-0293
Withholding Tax
Responsible Officer
For the Tax Period 1989-1991

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

1. Withholding Tax-Responsible Officer Liability

Authority: IC 6-3-4-8(f), IC 6-8.1-5-1(b), Indiana Department of Revenue v. Safayan 654 N.E. 2nd 279 (Ind.1995), Ball v. Indiana Department of Revenue, 563 N.E. 2nd 522 (Ind. 1990).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate withholding taxes.

STATEMENT OF FACTS

The taxpayer was an officer of a corporation that did not properly remit withholding taxes to the state during the tax period 1989-1991. The Indiana Department of Revenue, hereinafter referred to as the "department," assessed the unpaid withholding taxes, interest, and penalty against the taxpayer as a responsible officer of that corporation. The taxpayer protested the assessment of tax. A hearing was held and this Letter of Findings results.

1. Sales and Use Tax-Responsible Officer Liability

DISCUSSION

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. IC 6-8-1-5-1(b).

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides that "In 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."

Pursuant to Indiana Department of Revenue v. Safayan 654 N.E. 2nd 279 (Ind.1995) any officer, employee, or other person who has the authority to see that they are paid has the statutory duty to remit sales and withholding taxes to the state. The taxpayer agreed at the hearing that he had the responsibility to oversee the corporation and see that the withholding taxes were remitted to the state. Therefore, the taxpayer had the statutory duty to remit the sales taxes and is personally liable for the payment of those taxes.

The taxpayer contends that he made a good faith effort to remit the taxes to the state twelve years ago when the business was closed. The department has no records, however, of any payments on the liabilities in question. The taxpayer was not able to present any documentation to prove that the taxes had been paid. The taxpayer did not meet his burden of proving that the withholding taxes had already been paid and are not owing at this time.

The taxpayer also argues that pursuant to the doctrine of laches, the department's delay in personally assessing the taxes against him bars the department from collecting the subject withholding taxes from him now. The Indiana Supreme Court held in Ball v. Indiana Department of Revenue, 563 N.E. 2nd 522 (Ind. 1990) at page 522 that laches would apply only if the department had acted "in an unusually dilatory manner." In this case, the transfer of the liability to the responsible officer was made in the normal course of the department's operations. The taxpayer presented no evidence that the department acted in an unusually dilatory manner in this case. Therefore laches does not bar this assessment against the taxpayer.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040331.LOF

LETTER OF FINDINGS NUMBER: 04-0331
Responsible Officer Liability—Duty to Remit Sales Tax
Penalty—Request for Waiver
For Tax Year 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.

ISSUES

I. Responsible Officer Liability—Duty to Remit Sales Tax

Authority: IC § 6-2.5-2-1; IC § 6-2.5-9-3; 45 IAC 2.2-2-2; 45 IAC 2.2-9-4; *Indiana Department of Revenue v. Safayan,* 654 N.E.2d 270, 273 (Ind. 1995)

Taxpayer protests the Department's determination of responsible officer liability for sales tax not paid during the assessment period.

II. Penalty—Request for waiver

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

Taxpayer protests the imposition of the 10% negligence penalty and requests a waiver.

STATEMENT OF FACTS

Taxpayer protests the Department's determination of responsible officer liability, based on the following facts. Taxpayer incorporated the business, whose gross retail tax liability is at issue, in 1993. Taxpayer claims to have resigned as an officer of the corporation in 1996 when all shares in the company were sold to a third party who dissolved the corporation in 2003. Additional facts will be supplied as necessary.

I. Responsible Officer Liability—Duty to Remit Sales

A gross retail (sales) tax is imposed on retail transactions made in Indiana. While this sales tax is levied on the purchaser of retail goods, it is the retail merchant who must "collect the tax as agent for the state." *See*, IC § 6-2.5-2-1 and 45 IAC 2.2-2-2.

Individuals may be held personally responsible for failing to remit any sales tax. In determining who may acquire personal liability, IC § 6-2.5-9-3 is applicable:

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 (as described in IC § 6-2.5-3-2) 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.

See also, 45 IAC 2.2-9-4.

In order to determine which persons are personally liable for the payment of these "trust" taxes, the Department must initially determine which parties had a duty to remit the taxes to the Department. *Indiana Department of Revenue v. Safayan*, 654 N.E.2d 270, 273 (Ind. 1995) is instructive:

The method of determining whether a given individual is a responsible person is the same under the gross retail and the withholding tax…. An individual is personally liable for unpaid sales and withholding taxes if she is an officer, employee, or member of the employer who has a duty to remit the taxes to the Department…. The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that the taxes are paid.

The Indiana Supreme Court in *Safayan* identified three relevant factors:

(1) the person's position within the power structure of the corporation;

(2) the authority of the officer or employee as established by the articles of incorporation, bylaws, or the person's employment contract; and

(3) whether the person actually exercised control over the finances of the business.

The Supreme Court also stated in *Safayan* that "where the individual was a high ranking officer, we presume that he or she had sufficient control over the company's finances to give rise to a duty to remit the trust taxes." Id. at 273. The Department further notes that *Safayan* specifically rejects the defense of failure by an officer to exercise oversight.

Taxpayer has provided documents showing that taxpayer did indeed resign from the corporation as an officer in 1996, along with the other officers, who then sold all shares in the business to a third party.

The Department finds that taxpayer has provided sufficient evidence to overturn the Department's initial determination of responsible officer liability.

FINDING

Taxpayer's protest concerning the Department's determination of responsible officer liability for unpaid gross retail taxes is sustained.

II. Penalty—Request for waiver

DISCUSSION

Taxpayer protests the imposition of the 10% negligence penalty on the assessment. Since the Department has sustained taxpayer's protest on the merits, the penalty protest has been rendered moot.

DEPARTMENT OF STATE REVENUE

0420040349.LOF

LETTER OF FINDINGS NUMBER: 04-0349
Sales and Use Tax
For Tax Years 2003

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. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for one million, three hundred twenty eight thousand, four hundred fifty dollars ($1,328,450.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. Taxpayer's rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that the same individual signed the leasing agreement as lessor and as lessee. The rental rate was set far below the fair market rate. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

…

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid

lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040404.LOF

LETTER OF FINDINGS NUMBER: 04-0404
Sales and Use Tax
For Tax Years 2004

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. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for two million, fifty thousand dollars ($2,050,000.00) and claimed a sales tax exemption. The Department compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer charged for its aircraft. Taxpayer's rental rate was far below the market rate. The Department determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

…

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Taxpayer also refers to the Internal Revenue Code and a Revenue Procedure issued by the Internal Revenue Service. Taxpayer asserts that the lease was necessary to conform to both Federal Aviation Regulations and the Revenue Procedure. Taxpayer offers no detailed explanation beyond the bare assertion that the lease was necessary. Taxpayer fails to explain why setting the rental rate at a fraction of the rates charged by other rental businesses was necessary. The Department is unconvinced by this assertion.

Next, taxpayer refers to 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.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) 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 of 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.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that the same individual signed the leasing agreement as lessor and as lessee. Also, the Department has not received any documentation establishing that taxpayer's leasing business ever showed a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its two owner/renter parties to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total customer paid closer to comparable lease rates. Taxpayer explains that, under the "dry lease", the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

…

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp.

Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a "sham transaction". The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer the Department was correct to deny taxpayer's claim for the rental/lease exemption.

In conclusion, taxpayer's reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Neither Federal Air Regulations nor the Internal Revenue Code made it necessary for taxpayer to set its rental rates at a fraction of the fair market rental rate. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer's relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a "sham transaction" entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0320040450P.LOF

LETTER OF FINDINGS NUMBER: 04-0450P
Withholding Tax
For the month of March 2004

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. Tax Administration – Penalty

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

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late payment of a monthly withholding tax return for the month of March 2004.

The taxpayer is a company residing in Indiana.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the late penalty be abated as the taxpayer made a reasonable assumption. Since the taxpayer was filing quarterly in other states, the taxpayer assumed the filing for Indiana would be quarterly.

The Department let it be known upon the taxpayer's registration that early filing status was prompted by the amount of the taxpayer's withholding. Furthermore, the mailing labels were sent to the taxpayer the next day after the taxpayer registered.

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 was ignorant of its tax duties. Ignorance is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

DEPARTMENT OF STATE REVENUE

0320050032P.LOF

LETTER OF FINDINGS NUMBER: 05-0032P
Withholding Tax
For the Calendar Year 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 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(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing of W-2 forms for the calendar year 2002.

The taxpayer is a company residing in Indiana.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer argues the late penalty should be abated as the error was unintentional.

The taxpayer states all W-2 and WH-18 forms were processed by the due date. All forms were placed in the mail for delivery by the due date. It was discovered after mailing that the state copies of W-2 forms were not included with form WH-18 in the original mailing. As such, the taxpayer made a second mailing with copies of the W-2 and WH-18 forms.

The Department points out the W-2s and WH-18 were received one month late.

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 was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

DEPARTMENT OF STATE REVENUE

0320050088.LOF

LETTER OF FINDINGS NUMBER: 05-0088
Withholding Tax
Responsible Officer
For the Tax Period 1998-1999

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

1. Withholding Tax-Responsible Officer Liability

Authority: IC 6-8.1-5-1(b), IC 6-3-4-8(f).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales taxes.

STATEMENT OF FACTS

The taxpayer was the trustee of a trust which was an investor in a corporation that did not remit the proper amount of sales taxes during the tax period 1998-1999. The Indiana Department of Revenue assessed the unpaid sales taxes, interest, and penalty against the taxpayer as a responsible officer of that corporation. The taxpayer protested the assessment of tax. A hearing was held and this Letter of Findings results.

1. Withholding Tax-Responsible Officer Liability

DISCUSSION

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. IC 6-8-1-5-1(b).

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides that "In 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."

The taxpayer produced substantial documentation that he had no duty to collect and remit the withholding taxes to the state. Therefore, he is not personally responsible for the payment of the corporate withholding taxes.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0120040311.LOF

SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 04-0311
Individual Income Tax
For the Year 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

Individual Income Tax—Assessment

Authority: IC 6-8.1-5-1(a), (b), (c).

Taxpayer protests the assessment of individual income tax.

STATEMENT OF FACTS

Taxpayer filed an IT-40 for the year ending 2001, which listed no income. A cross-match with the federal return indicated income. The Department mailed to Taxpayer a Proposed Assessment and a Demand Notice for Payment. Taxpayer mailed a protest letter to the Department stating that they do not agree with the proposed amount. A hearing officer was assigned to hear the protest and mailed a letter informing Taxpayer of the hearing date. Taxpayer did not show for the tax protest hearing and a Letter of Findings was written based on the information in Taxpayer's case file. Taxpayer requested a rehearing and one was granted. Taxpayer was mailed a certified letter stating the date and time of the rehearing. A return receipt was received with Taxpayer's signature upon it. The Hearing Officer also phoned and spoke with Taxpayer—to inform them of the date and time of the rehearing. Taxpayer also did not show for the rehearing. Taxpayer did mail a certified letter containing their basis for the tax protest. That letter was included in Taxpayer's case file. This Supplementary Letter of Findings was written based on the information in Taxpayer's case file.

DISCUSSION

All tax assessments are presumed to be accurate. The taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). 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. The amount of the assessment is considered a tax payment not made by the due date and is subject to IC 6-8.1-10 concerning the imposition of penalties and interest. The Department shall send the person a notice of the proposed assessment through the United States mail. IC 6-8.1-5-1(a). The notice shall state that the person has sixty (60) days from the date the notice is mailed to pay the assessment or to file a written protest. If the person files a protest and requests a hearing on the protest, the Department shall:

(1) set the hearing at the Department's earliest convenient time; and

(2) notify the person by United States mail of the time, date, and location of the hearing.

IC 6-8.1-5-1(c).

The Department has followed the statutes and has provided Taxpayer with the opportunity to be heard at a hearing and also at a rehearing—which Taxpayer has chosen not to attend both times. Based on the information and evidence in Taxpayer's case file, the Department finds the assessment to be accurate. No credible evidence to rebut the accuracy of the assessment was provided by Taxpayer. Taxpayer has made references to the Internal Revenue code, Indiana statutes, and United States Supreme Court cases that since have been overruled. None of these are convincing to rebut the presumption of the accuracy of the assessment. Taxpayer has cited Indiana statutes and regulations permitting access to public records. This has no bearing upon rebutting the accuracy of the assessment.

FINDING

Taxpayer's protest is denied. The assessment of individual income tax is due. Penalties and interest are due.

DEPARTMENT OF STATE REVENUE
Indiana Department of State Revenue
Revenue Ruling #2005-03ST
March 2, 2005

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

Sales and Use Tax-Imposition

Authority: I.C. 6-2.5-3-2(a), I.C. 6-2.5-1-2, I.C. 6-2.5-1-2, I.C. 6-2.5-4, I.C. 6-2.5-4-1(b), I.C. 6-2.5-4-1(d), I.C. 6-2.5-4-2(b)(1), I.C. 6-2.5-4-2(b)(1), I.C. 6-2.5-5-5-8, I.C. 6-2.5-2-1.

Taxpayer requests that the department rule on the proper treatment of Taxpayer and the concerns with which Taxpayer conducts business for Indiana state gross retail ("sales") and use tax purposes.

STATEMENT OF FACTS

Taxpayer is a corporation providing an online shopping and information service to the general public, electronically linking consumers and local retailers. A member of the general public ("Customer") wishing to use the service must register with the taxpayer. There is no charge for registration or use of the service.

A local Retailer's listing on the taxpayer's website is free and includes a free web-link to the Retailer's e-commerce website. A retailer may, in addition to receiving a free basic listing, sign up for enhanced listing features (e.g., listing in bold or red letters), advertising, the creation and maintenance of an e-commerce website by Taxpayer, and to provide free delivery service by a Deliverer for orders over an amount ("Breakpoint") determined by the retailer.

Upon accessing the website maintained by Taxpayer, a Customer encounters a "Mall Directory", which contains a listing of the various categories of products that may be ordered as well as advertising. Clicking on a category, e.g., "Books", leads to a "Books Main Street", which lists local Retailers (Borders, Barnes & Noble, etc.) from which books may be ordered. Clicking on a listed Retailer, in turn, typically takes the Customer to the Retailer's e-commerce website, where the customer can review the inventory and select the item(s) to be purchased. Upon completion of shopping, the Customer sends an order to Taxpayer, which, in turn, sends the order via internet to a Deliverer close to the Customer and the Retailer from which items are ordered. A Customer is free to request the services of a particular Deliverer, subject to availability.

Deliverers are independent contractors, often housewives or single mothers that are engaged in the business of providing personal shopping, fulfillment and courier services for Customers. Taxpayer anticipates that there will be approximately 125 Deliverers providing services in the area.

A Deliverer who receives notice of an order from Taxpayer is free to accept or reject the order. If rejected, Taxpayer sends the order to another Deliverer, and so on, until the order is accepted. A Deliverer who accepts an order drives to the Retailer and purchases the items ordered on behalf of the Customer, paying the Retailer the retail price of items purchased plus applicable sales tax. The Deliverer may call or e-mail the Customer from the Retailer's location and suggest an alternative to an item ordered if the item is out of stock, if a similar item is on sale, etc. The Deliverer then delivers the order to the Customer along with the original sales receipt from the Retailer.

Customers only make payments to Deliverers. Customers make no payments to Taxpayer, nor do they make payments to Retailers. Typically a Customer pays a Deliverer: (a) reimbursement for the price of the items (including applicable sales tax) which the Deliverer purchased on the Customer's behalf; (b) a fee for the Deliverer's services; and (c) a tip (optional).

Deliverers receive the following payments from Customers: (a) reimbursements for the retail price of items purchased (including sales tax) on behalf of the Customers; (b) fees for their services (Delivery Fees); and (c) tips. In addition, Deliverers receive payments for their services from Retailers who sign up to advertise for free Deliverer service on Taxpayer's website. A general retail Free Service Retailer pays a Deliverer an amount equal to 10% of the retail price of items on orders below the breakpoint, and that amount plus a Delivery Fee of $4.95 on orders at or above the Breakpoint.

All Retailers only receive payment for items that Deliverers purchase on behalf of Customers from the Deliverers. All Retailers collect sales tax on the full retail price of items which Deliverers purchase on behalf of Customers.

Taxpayer, the Deliverers and the Customers view the business as a personal shopping service. What Customers desire, and what they get, is a personal valet to perform shopping services.

Deliverers do not maintain any stock of goods, do not hold themselves out as merchants, pay applicable sales tax on the price of items purchased from Retailers on behalf of Customers, and provide Customers with the original sales slip on all purchases. Furthermore, Deliverers do not "mark-up" the Retailers' price of such items, and only receive reimbursement from Customers for the retail price of items (including tax) purchased for the Customers.

DISCUSSION

I.C. 6-2.5-2-1(a) imposes sales tax on retail transactions made in Indiana. I.C. 6-2.5-3-2(a) imposes use tax on the storage, use or consumption of tangible personal property in Indiana, if the property was acquired in a retail transaction as defined for sales tax purposes, regardless of the location of that transaction. A "retail transaction" is defined in I.C. 6-2.5-1-2 as a transaction that constitutes "selling at retail", a "wholesale sale"' or that is otherwise described as a transaction that is otherwise described in I.C. 6-2.5-4. These provisions impose sales and use tax on certain defined services. None of those services, however, include the type of personal shopping and fulfillment services provided by the Taxpayer or the Deliverer.

I.C. 6-2.5-4-1(b) states that a person is engaged in "selling at retail" when:

In the ordinary course of his regularly conducted trade or business, he:

(1) Acquires tangible personal property for the purpose of resale; and

(2) Transfers the property to another for consideration.

A person is not selling at retail if making a "wholesale sale". I.C. 6-2.5-4-1(d). A person is making a "wholesale sale: when he "sells tangible personal property... to a person who purchases the property for the purpose of reselling it without changing its form." I.C. 6-2.5-4-2(b)(1).

I.C. 6-2.5-5-5-8 provides that transactions involving tangible personal property are exempt from tax "if the person acquiring the property acquires it for resale... in the ordinary course of the person's business without changing the form.

Indiana sales of tangible personal property are subject to the Indiana sales tax unless they qualify for a statutory exemption. The sellers of the property are required to collect the sales tax from the purchasers and remit that tax to the state. I.C. 6-2.5-2-1.

I.C. 6-2.5-8-8 provides for exemption certificates from sales tax in pertinent part as follows:

(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.

In the fact situation submitted by the Taxpayer, the retail transaction or transfer of tangible personal property for consideration is between the Retailer and the Customer. The Customer purchases an item such as a sweater or book from the Retailer. The sales tax is properly imposed on this transaction. The Retailer has the statutory duty to collect the sales tax from the Customer or his agent and remit the sales tax to the state unless the transaction or use of the item qualifies for a statutory exemption. If the Retailer receives a valid exemption certificate from the Customer, the Retailer is relieved of the duty to collect and remit the sales tax.

The Taxpayer does not transfer any tangible personal property for consideration in a retail transaction. Rather, it provides services. It provides advertising opportunities to Retailers. It allows Customers to use its services and website. It facilitates retail sales by connecting Customers with Retailers. It connects Customers with Deliverers. None of these services are listed as a taxable service in the statute. The Taxpayer does not engage in retail transactions.

The Deliverers provide personal shopping and fulfillment services. These are not services defined as taxable services in the statute. The Deliverers do not buy items in a wholesale sale and resell it to the Customers. The Deliverers act as agents for the Customers in their transactions with the Retailers. The Deliverers step into the shoes of the Customers. Deliverers receive specific directions from Customers as to exactly which item to purchase, where to purchase the item, and the price to pay for the item. If any change is necessary, the Deliverer calls the Customer to receive specific authority to make the change in item, cost, or location of purchase. The Deliverer pays for the item and accepts title on behalf of the Customer who reimburses the Deliverer. The fee paid to the Deliverer for picking up and delivery of the item is not subject to sales tax.

Customers directly reimburse the Deliverers for the consideration and sales tax paid. Any additional fees such as delivery charges and tips are for the non-taxable personal shopping service.

This nontaxable delivery fee is distinguishable from a situation where the delivering party is not the true agent of the buyer. An example of a taxable delivery fee would be a buyer wishing to buy gravel. The purchaser would call a trucking company which would obtain the gravel and deliver it to the buyer. In that taxable situation, the trucking company would have the freedom to choose the retailer from whom to buy the gravel. The trucking company is an independent contractor, not the true agent of the buyer.

RULING

1. Taxpayer has no sales or use tax obligations in connection with Customers' use of its service or website, Deliverers' provision of services to Customers, or Deliverers' purchases from Retailers on behalf of Customers.

2. Deliverers are obligated to pay sales tax to Retailers on the retail price of taxable tangible personal property which Deliverers purchase from Retailers on behalf of Customers.

3. Deliverers who make purchases on behalf of exempt organization Customers may, if authorized to do so by such Customers,

issue exemption certificates for purchases made on behalf of the Customers.

4. Deliverers are not obligated to collect sales or use tax on the amounts received from Customers as reimbursements for amounts paid to Retailers in purchasing items on behalf of the Customers, on Delivery Fees, or on tips.

5. Retailers are obligated to collect sales tax on the retail price of all taxable tangible personal property sold to Deliverers on behalf of customers, but are not obligated to collect sales or use tax on amounts which Deliverers receive from Customers.

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 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.

DEPARTMENT OF STATE REVENUE
Revenue Ruling #2005-04ST
March 22, 2005

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

Sales and Use Tax-Imposition

Authority: IC 6-2.5-2-1, IC 6-2.5-1-2, IC 6-2.5-4-1, IC 6-2.5-3-4(a), IC 6-2.5-3-2, IC 6-2.5-3-6, Black's Law Dictionary, Sixth Edition, West Publishing Company, 1990, at page 63.

The taxpayer requests that the department rule on the application of Indiana sales and use tax to its Indiana activities in procuring goods and services from third-party vendors necessary for the operation of the property being managed by the taxpayer.

STATEMENT OF FACTS

The taxpayer is an out of state corporation with offices in Indiana and throughout the country. The taxpayer performs property management services in Indiana for owners and occupiers of commercial real estate in Indiana. For each client engagement, the taxpayer operates under one of two types of arrangements, as determined by marketplace conditions:

1. IC Engagement: In an IC Engagement, the taxpayer operates as an independent contractor under a Facilities Management Agreement. Unless expressly stated, the taxpayer does not operate with express agency authority from the client in an IC Engagement.

2. Agency Engagement: In an Agency Engagement, the taxpayer acts as an agent for the client under an express grant of authority given in the Property Management Agreement entered into between the taxpayer and the client.

In the normal course of a property management engagement, whether an IC Engagement or an Agency Engagement, the taxpayer procures all goods and/or services from third-party vendors necessary to operate the properties being managed for a particular client. Examples of such goods and services include: landscaping services; washroom supplies; and elevator maintenance services. The goods and services provided by third-party vendors are provided directly to a specific client's property for immediate use on that property to satisfy an immediate need. The third-party provided goods are never held as inventory of the taxpayer for use at a later time, or for performing property management services for any of its other clients. The taxpayer never takes title to or possession of any goods provided by third-party vendors.

The taxpayer receives invoices for these goods and services from the third-party vendors, and presents the invoices to the subject client for approval. All invoices include applicable retail sales and use taxes. Once an invoice is approved, the client deposits funds into a segregated bank account. The taxpayer is authorized to withdraw funds to pay the total amount of the invoice including all applicable retail sales and use taxes. The taxpayer does not pay the vendors using taxpayer's funds. The third-party vendor and the taxpayer agree that the vendor will only be paid from funds deposited by the client into the segregated bank account. Further, the third-party vendor and the taxpayer agree that the taxpayer will have no liability in the event of non-payment by the client.

For both IC Engagements and Agency Engagements, the third-party vendor determines the applicable retail sales and use tax for each invoice, and adds that tax to the invoice. The tax is paid when the full amount of the invoice is paid from the segregated bank account. The vendor remits the tax as part of its usual monthly sales and use tax procedures. The taxpayer's role is to oversee the payment of applicable retail sales and use taxes as part of the payment of vendor invoices from the segregated account. All retail sales and use taxes applicable to the goods and services provided by third-party vendors are collected and remitted in the appropriate amount and time.

The taxpayer does not charge or otherwise receive any sort of mark-up on the goods and services procured on behalf of the client. The taxpayer's value is added solely in the management of the client's property and the timely ascertainment of the need for particular goods or services for the operation of that property. The taxpayer receives no compensation from its clients based on its inventory distribution and maintenance services as would a wholesaler or retailer in a traditional supply chain. Whether the property management engagement is an IC Engagement or an Agency Engagement, the taxpayer's value is in the oversight, coordination, and procurement of vendor-provided goods and services that are found to be needed for the particular property and particular client.

The only differentiating feature between IC Engagements and Agency Engagements is the way that a third-party vendor makes its contract. In an IC Engagement, the third-party vendor makes its contract directly with the taxpayer. In an Agency Engagement, due to the express agency the taxpayer obtains from its client, the third-party vendor makes its contract with the taxpayer as agent for the taxpayer's client. All of the attributes summarized in the preceding paragraphs are the same with either an IC Engagement or an Agency Engagement.

In return for its property management service, the taxpayer is compensated through a monthly management fee, upon which the taxpayer pays all applicable taxes including any applicable sales tax.

DISCUSSION

The Indiana sales tax is imposed on tangible personal property and/or taxable services acquired in a retail transaction for which a total combined charge or selling price is calculated. The consumer is liable for payment of the sales tax and must pay the tax to the retail merchant as a separately added amount to the sales price. The seller remits the tax to the state. IC 6-2.5-2-1. A "retail transaction" is "a transaction of a retail merchant that constitutes selling at retail." IC 6-2.5-1-2. A retail merchant is selling at retail when the merchant sells or provides a taxable service in the ordinary course of his business for consideration to another person. IC 6-2.5-4-1.

The Indiana use tax is an excise tax imposed on the storage, use, or consumption of tangible personal property in Indiana that was acquired in a retail transaction, regardless of the location of the transaction or the retail merchant making the transaction. IC 6-2.5-3-2. The use tax is not due if the sales tax was paid on the transaction or the use of the property is eligible for a statutory exemption. IC 6-2.5-3-4(a). Purchasers/ consumers of property or services that are subject to use tax must pay the tax to the seller, if the seller has sufficient contacts with Indiana to compel use tax collection. Otherwise, the purchaser/consumer must self assess the tax and remit it directly to the Indiana Department of Revenue. IC 6-2.5-3-6.

The taxpayer argues that it will be acting in the capacity of an agent for the clients in the purchasing of supplies and services for the clients. The term "agent" is defined in Black's Law Dictionary, Sixth Edition, West Publishing Company, 1990, at page 63 as, a "person authorized by another (principal) to act for or in place of him; one entrusted with another's business."

In both the IC and Agency agreements, the clients give clear and written consent to the taxpayer to act on their behalf. The taxpayer holds itself out as an agent in their dealings with the providers of supplies and services to the third-party vendors. The taxpayer has no right, title, or interest in the property and services purchased for clients. Nor does the taxpayer have any right, title, or interest in the money used to pay for the supplies and services. The money passes intact from the clients to the third-party vendors. The taxpayer acts in the stead of its clients and is entrusted with their business. In these situations, the taxpayer is a true agent concerning the procurement of supplies and services for its clients.

Because the taxpayer as a true agent is transacting the business of the clients, the transactions do not constitute sales for resale from the third-party vendors to the taxpayer. Rather, the sales of goods and services are between the third-party vendors and the taxpayer's clients. The clients must pay the sales or use tax. The third-party vendors must collect and remit the taxes.

RULING

1. The taxpayer is the true agent of the clients in the procurement of supplies and services.

2. The transactions between the third-party vendors and the taxpayer's clients are direct retail sales by the third-party vendors to the taxpayer's clients.

3. The transactions between the third-party vendors and the taxpayer's clients do not constitute sales for resale to taxpayer.

4. The taxpayer does not need to register as a retail merchant or issue exemption certificates on the sales.

5. If the third-party vendor does not have sufficient nexus, the taxpayer's clients must self assess and pay the use tax directly to the state.

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 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.

TITLE 25 INDIANA DEPARTMENT OF ADMINISTRATION

25 IAC 6	N	04-172	27 IR 3595	*CPH (28 IR 234)

TITLE 28 STATE INFORMATION TECHNOLOGY OVERSIGHT COMMISSION

28 IAC	N	04-123	28 IR 986	*CPH (28 IR 1498)

TITLE 31 STATE PERSONNEL DEPARTMENT

31 IAC 1-9-4	A	04-170	27 IR 4049	
31 IAC 2-11-4	A	04-170	27 IR 4049	

TITLE 40 STATE ETHICS COMMISSION

40 IAC 2-1-5.5	N	04-198	28 IR 987 28 IR 2160	
40 IAC 2-1-6	A	04-198	28 IR 987 28 IR 2160	
40 IAC 2-1-7	A	04-198	28 IR 988 28 IR 2161	

TITLE 45 DEPARTMENT OF STATE REVENUE

45 IAC 1.3	N	04-125	27 IR 3101	
45 IAC 18	R	04-292	28 IR 1518	
45 IAC 18-3-7	R	04-255	28 IR 624	*AWR (28 IR 971)
45 IAC 18-3-7.1	N	04-255	28 IR 623	*AWR (28 IR 971)
45 IAC 18-3-8	R	04-255	28 IR 624	*AWR (28 IR 971)
45 IAC 18-3-8.1	N	04-255	28 IR 623	*AWR (28 IR 971)
45 IAC 20	N	04-292	28 IR 1500	

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

50 IAC 20	N	04-174	27 IR 3603	*AROC (27 IR 3707) **28 IR 1458**
50 IAC 21	N	02-297	27 IR 4050	**28 IR 1452**

TITLE 65 STATE LOTTERY COMMISSION

65 IAC 1-4-5.5	A	04-237		*ER (28 IR 217)
65 IAC 4-2-6	A	05-36		*ER (28 IR 2153)
65 IAC 4-90	R	04-249		*ER (28 IR 227)
65 IAC 4-99	R	04-249		*ER (28 IR 227)
65 IAC 4-205	R	04-249		*ER (28 IR 227)
65 IAC 4-248	R	04-249		*ER (28 IR 227)
65 IAC 4-272	R	04-249		*ER (28 IR 227)
65 IAC 4-287	R	04-249		*ER (28 IR 227)
65 IAC 4-317	R	04-249		*ER (28 IR 227)
65 IAC 4-319	R	04-249		*ER (28 IR 227)
65 IAC 4-321	R	04-249		*ER (28 IR 227)
65 IAC 4-332	R	04-249		*ER (28 IR 227)
65 IAC 4-343	R	04-249		*ER (28 IR 227)
65 IAC 4-348	N	04-241		*ER (28 IR 221)
65 IAC 4-349	N	04-283		*ER (28 IR 975)
65 IAC 4-350	N	04-252		*ER (28 IR 229)
65 IAC 4-352	N	04-284		*ER (28 IR 978)
65 IAC 4-353	N	04-329		*ER (28 IR 1492)
65 IAC 4-354	R	04-249		*ER (28 IR 227)
65 IAC 4-355	N	05-32		*ER (28 IR 2147)
65 IAC 4-359	R	04-249		*ER (28 IR 227)
65 IAC 4-367	R	04-249		*ER (28 IR 227)
65 IAC 4-383	R	04-249		*ER (28 IR 227)
65 IAC 4-390	R	04-249		*ER (28 IR 227)
65 IAC 4-401	R	04-249		*ER (28 IR 227)
65 IAC 4-402	R	04-249		*ER (28 IR 227)
65 IAC 4-403	R	04-249		*ER (28 IR 227)
65 IAC 4-404	R	04-249		*ER (28 IR 227)
65 IAC 4-405	R	04-249		*ER (28 IR 227)
65 IAC 4-406	R	04-249		*ER (28 IR 227)
65 IAC 4-408	R	04-249		*ER (28 IR 227)
65 IAC 4-437	R	04-249		*ER (28 IR 227)
65 IAC 4-439	R	04-249		*ER (28 IR 227)
65 IAC 4-440	R	04-249		*ER (28 IR 227)
65 IAC 4-441	R	04-249		*ER (28 IR 227)
65 IAC 4-442	R	04-249		*ER (28 IR 227)
65 IAC 4-443	R	04-249		*ER (28 IR 227)
65 IAC 4-445	R	04-249		*ER (28 IR 227)
65 IAC 4-446	R	04-249		*ER (28 IR 227)
65 IAC 4-447	R	04-249		*ER (28 IR 227)
65 IAC 4-448	R	04-249		*ER (28 IR 227)
65 IAC 4-450	R	04-249		*ER (28 IR 227)
65 IAC 4-453	R	04-249		*ER (28 IR 227)
65 IAC 5-2-6	A	05-36		*ER (28 IR 2153)
65 IAC 5-13	R	04-249		*ER (28 IR 227)
65 IAC 5-14	R	04-249		*ER (28 IR 227)
65 IAC 5-15	R	04-249		*ER (28 IR 227)
65 IAC 5-16	N	05-28		*ER (28 IR 2142)
65 IAC 6-2-6	A	05-36		*ER (28 IR 2154)

TITLE 68 INDIANA GAMING COMMISSION

68 IAC 1-5-1	A	04-103	27 IR 3115	**28 IR 532**
68 IAC 2-3-5	A	04-103	27 IR 3115	**28 IR 533**
68 IAC 2-3-6	A	04-103	27 IR 3117	**28 IR 535**
68 IAC 2-3-9	A	04-103	27 IR 3118	**28 IR 535**
68 IAC 2-6-49	A	04-102	27 IR 3109	**28 IR 526**
68 IAC 2-7-12	A	04-102	27 IR 3109	**28 IR 526**
68 IAC 5-3-2	A	04-102	27 IR 3109	**28 IR 526**
68 IAC 5-3-7	A	04-102	27 IR 3109	**28 IR 527**
68 IAC 8-1-11	A	04-102	27 IR 3110	**28 IR 527**
68 IAC 8-2-29	A	04-102	27 IR 3110	**28 IR 527**
68 IAC 9-4-8	A	04-102	27 IR 3110	**28 IR 527**
68 IAC 10-1-5	A	04-102	27 IR 3110	**28 IR 527**
68 IAC 11-1-8	A	04-102	27 IR 3110	**28 IR 528**
68 IAC 11-3-1	A	04-102	27 IR 3110	**28 IR 528**
68 IAC 12-1-15	A	04-102	27 IR 3111	**28 IR 529**
68 IAC 14-4-8	A	04-102	27 IR 3112	**28 IR 529**
68 IAC 14-5-6	A	04-102	27 IR 3112	**28 IR 529**
68 IAC 15-1-8	A	04-102	27 IR 3112	**28 IR 530**
68 IAC 15-3-3	A	04-179	28 IR 237	**28 IR 2014**
68 IAC 15-5-2	A	04-179	28 IR 237	**28 IR 2014**
68 IAC 15-6-2	A	04-179	28 IR 238	**28 IR 2015**
68 IAC 15-6-3	A	04-179	28 IR 239	**28 IR 2016**
68 IAC 15-6-5	A	04-179	28 IR 240	**28 IR 2016**
68 IAC 15-9-4	A	04-102	27 IR 3112	**28 IR 530**
68 IAC 15-10-4.1	A	04-102	27 IR 3113	**28 IR 530**
68 IAC 15-13-2.5	N	04-102	27 IR 3113	**28 IR 531**
68 IAC 16-1-16	A	04-102	27 IR 3113	**28 IR 531**
68 IAC 17-1-5	A	04-102	27 IR 3114	**28 IR 531**
68 IAC 17-2-6	A	04-102	27 IR 3114	**28 IR 531**
68 IAC 18-1-2	A	04-102	27 IR 3114	**28 IR 531**
68 IAC 18-1-6	A	04-102	27 IR 3114	**28 IR 532**

TITLE 71 INDIANA HORSE RACING COMMISSION

71 IAC 7.5-6-3	A	05-27		*ER (28 IR 2154)

TITLE 140 BUREAU OF MOTOR VEHICLES

140 IAC 4-4	RA	04-162	28 IR 323	**28 IR 1315**
140 IAC 8-4	RA	04-162	28 IR 323	**28 IR 1315**

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

170 IAC 1-4	RA	04-163	27 IR 4140	*CPH (28 IR 620) **28 IR 1315**
170 IAC 1-5	RA	04-163	27 IR 4140	*CPH (28 IR 620) **28 IR 1315**
170 IAC 4-1-15	R	04-144	27 IR 4095	*CPH (28 IR 620)
170 IAC 4-1-16	R	04-144	27 IR 4095	*CPH (28 IR 620)
170 IAC 4-1-16.5	R	04-144	27 IR 4095	*CPH (28 IR 620)
170 IAC 4-1-16.6	R	04-144	27 IR 4095	*CPH (28 IR 620)
170 IAC 4-1-17	R	04-144	27 IR 4095	*CPH (28 IR 620)
170 IAC 4-1-23	A	04-68	27 IR 2765	**28 IR 789**
170 IAC 4-1.2	N	04-144	27 IR 4057	*CPH (28 IR 620)
170 IAC 4-4.2	N	03-305	27 IR 2312	**28 IR 786**
170 IAC 5-1-15	R	04-144	27 IR 4095	*CPH (28 IR 620)

170 IAC 5-1-16	R	04-144	27 IR 4095	*CPH (28 IR 620)
170 IAC 5-1-16.5	R	04-144	27 IR 4095	*CPH (28 IR 620)
170 IAC 5-1-16.6	R	04-144	27 IR 4095	*CPH (28 IR 620)
170 IAC 5-1-17	R	04-144	27 IR 4095	*CPH (28 IR 620)
170 IAC 5-1.2	N	04-144	27 IR 4065	*CPH (28 IR 620)
170 IAC 6-1-15	R	04-144	27 IR 4095	*CPH (28 IR 620)
170 IAC 6-1-16	R	04-144	27 IR 4095	*CPH (28 IR 620)
170 IAC 6-1-17	R	04-144	27 IR 4095	*CPH (28 IR 620)
170 IAC 6-1.1	N	04-268	28 IR 1518	*CPH (28 IR 1710)
170 IAC 6-1.2	N	04-144	27 IR 4073	*CPH (28 IR 620)
170 IAC 7-1.3-2	A	04-144	27 IR 4080	*CPH (28 IR 620)
170 IAC 7-1.3-3	A	04-144	27 IR 4081	*CPH (28 IR 620)
170 IAC 7-1.3-8	A	04-144	27 IR 4083	*CPH (28 IR 620)
170 IAC 7-1.3-9	A	04-144	27 IR 4084	*CPH (28 IR 620)
170 IAC 7-1.3-10	A	04-144	27 IR 4085	*CPH (28 IR 620)
170 IAC 7-6	RA	05-22	28 IR 2458	
170 IAC 8.5-2-1	A	04-144	27 IR 4086	*CPH (28 IR 620)
170 IAC 8.5-2-3	A	04-144	27 IR 4087	*CPH (28 IR 620)
170 IAC 8.5-2-4	A	04-144	27 IR 4089	*CPH (28 IR 620)
170 IAC 8.5-2-5	A	04-144	27 IR 4092	*CPH (28 IR 620)

TITLE 203 VICTIM SERVICES DIVISION

203 IAC	N	04-63	27 IR 2526	**28 IR 6**

TITLE 207 CORONERS TRAINING BOARD

207 IAC 2	N	04-231	28 IR 624	*ARR (28 IR 2392)

TITLE 240 STATE POLICE DEPARTMENT

240 IAC 8	RA	04-164	27 IR 4140	**28 IR 677**

TITLE 305 INDIANA BOARD OF LICENSURE FOR PROFESSIONAL GEOLOGISTS

305 IAC 1-2-6	A	03-212	27 IR 216	*ARR (28 IR 215) **28 IR 12**
305 IAC 1-3-4	A	03-212	27 IR 216	*ARR (28 IR 215) **28 IR 12**
305 IAC 1-4-1	A	03-212	27 IR 217	*ARR (28 IR 215) **28 IR 12**
305 IAC 1-4-2	A	03-212	27 IR 217	*ARR (28 IR 215) **28 IR 13**
305 IAC 1-5	N	03-212	27 IR 217	*ARR (28 IR 215) **28 IR 13**

TITLE 312 NATURAL RESOURCES COMMISSION

312 IAC 2-4-6	A	04-215	28 IR 626	**28 IR 2348**
312 IAC 2-4-12	A	04-67	27 IR 3604	**28 IR 1460**
312 IAC 2-4-14	N	04-215	28 IR 626	**28 IR 2348**
312 IAC 3-1-7	A	04-263	28 IR 1203	
312 IAC 4-6-6	A	04-208	28 IR 625	*ARR (28 IR 2140)
312 IAC 5-6-5	A	04-84	28 IR 240	**28 IR 1680**
312 IAC 5-6-5.5	N	04-210	28 IR 989	
312 IAC 5-14-1	A	04-155	27 IR 4100	**28 IR 1461**
312 IAC 5-14-2	A	04-155	27 IR 4100	**28 IR 1461**
312 IAC 5-14-4	A	04-155	27 IR 4101	**28 IR 1462**
312 IAC 5-14-5	R	04-155	27 IR 4109	**28 IR 1470**
312 IAC 5-14-5.1	N	04-155	27 IR 4101	**28 IR 1462**
312 IAC 5-14-6	R	04-155	27 IR 4109	**28 IR 1470**
312 IAC 5-14-6.1	N	04-155	27 IR 4102	**28 IR 1463**
312 IAC 5-14-7	A	04-155	27 IR 4102	**28 IR 1463**
312 IAC 5-14-8	A	04-155	27 IR 4102	**28 IR 1464**
312 IAC 5-14-9	A	04-155	27 IR 4103	**28 IR 1464**
312 IAC 5-14-11	A	04-155	27 IR 4103	**28 IR 1464**
312 IAC 5-14-15	A	04-155	27 IR 4103	**28 IR 1465**
312 IAC 5-14-16	A	04-155	27 IR 4104	**28 IR 1465**
312 IAC 5-14-17	A	04-155	27 IR 4104	**28 IR 1465**
312 IAC 5-14-18	A	04-155	27 IR 4105	**28 IR 1466**
312 IAC 5-14-19	A	04-155	27 IR 4105	**28 IR 1467**
312 IAC 5-14-20	A	04-155	27 IR 4106	**28 IR 1467**
312 IAC 5-14-21	A	04-155	27 IR 4106	**28 IR 1467**
312 IAC 5-14-22	A	04-155	27 IR 4106	**28 IR 1468**
312 IAC 5-14-24	A	04-155	27 IR 4107	**28 IR 1468**
312 IAC 5-14-25	A	04-155	27 IR 4108	**28 IR 1469**
312 IAC 5-14-26	R	04-155	27 IR 4109	**28 IR 1470**
312 IAC 5-14-27	N	04-155	27 IR 4109	**28 IR 1470**
312 IAC 6.2	N	04-66	27 IR 3119	**28 IR 1459**
312 IAC 6.5	N	04-3	27 IR 2767	**28 IR 15**
312 IAC 8	RA	03-315	27 IR 2339	**28 IR 1315**
312 IAC 8-1-4	A	05-18	28 IR 2412	
312 IAC 8-2-3	A	05-18	28 IR 2413	
312 IAC 8-2-8	A	05-18	28 IR 2414	
312 IAC 9-1-9.5	N	03-311	27 IR 1946	**28 IR 536**
312 IAC 9-1-11.5	N	03-311	27 IR 1946	**28 IR 536**
312 IAC 9-2-14	N	04-253	28 IR 1522	
312 IAC 9-2-15	N	04-253	28 IR 1522	
312 IAC 9-3-2	A	03-311	27 IR 1946	**28 IR 536**
312 IAC 9-3-3	A	03-311	27 IR 1947	**28 IR 538**
312 IAC 9-3-4	A	03-311	27 IR 1948	**28 IR 538**
	A	04-253	28 IR 1523	
312 IAC 9-3-5	A	04-253	28 IR 1523	
312 IAC 9-3-10	A	03-311	27 IR 1949	**28 IR 539**
312 IAC 9-3-11	A	03-311	27 IR 1949	**28 IR 539**
312 IAC 9-3-12	A	03-311	27 IR 1949	**28 IR 539**
312 IAC 9-3-13	A	03-311	27 IR 1950	**28 IR 540**
312 IAC 9-3-14	A	03-311	27 IR 1950	**28 IR 540**
312 IAC 9-3-15	A	03-311	27 IR 1950	**28 IR 540**
312 IAC 9-3-17	A	03-311	27 IR 1950	**28 IR 540**
312 IAC 9-4-7	R	03-311	27 IR 1966	**28 IR 556**
312 IAC 9-4-10	A	03-311	27 IR 1951	
312 IAC 9-4-11	A	03-311	27 IR 1951	**28 IR 541**
	A	04-253	28 IR 1524	
312 IAC 9-4-14	A	03-311	27 IR 1952	**28 IR 542**
312 IAC 9-5-4	A	03-311	27 IR 1953	**28 IR 542**
	A	04-253	28 IR 1526	
312 IAC 9-5-6	A	03-311	27 IR 1953	**28 IR 543**
312 IAC 9-5-7	A	03-311	27 IR 1953	**28 IR 543**
	A	04-253	28 IR 1526	
312 IAC 9-5-9	A	03-311	27 IR 1955	**28 IR 545**
	A	04-253	28 IR 1528	
312 IAC 9-5-11	N	03-311	27 IR 1956	**28 IR 546**
312 IAC 9-6-9	A	03-311	27 IR 1957	**28 IR 547**
312 IAC 9-7-2	A	03-311	27 IR 1957	**28 IR 547**
312 IAC 9-7-6	A	03-311	27 IR 1959	**28 IR 549**
312 IAC 9-7-13	A	03-311	27 IR 1960	**28 IR 550**
312 IAC 9-10-9	A	03-311	27 IR 1960	**28 IR 550**
312 IAC 9-10-9.5	N	03-311	27 IR 1961	**28 IR 551**
312 IAC 9-10-10	A	03-311	27 IR 1962	**28 IR 552**
312 IAC 9-10-13.5	N	03-311	27 IR 1963	**28 IR 553**
312 IAC 9-10-17	A	03-311	27 IR 1964	**28 IR 554**
312 IAC 9-11-1	A	03-311	27 IR 1964	**28 IR 554**
312 IAC 9-11-2	A	03-311	27 IR 1965	**28 IR 555**
312 IAC 9-11-14	A	03-311	27 IR 1965	**28 IR 555**
312 IAC 11	RA	05-1	28 IR 2203	
312 IAC 11-2-5	A	04-157	28 IR 1521	
312 IAC 11-2-11.5	N	04-94	27 IR 4095	**28 IR 1681**
312 IAC 11-3-1	A	04-94	27 IR 4095	**28 IR 1681**
312 IAC 12	RA	05-1	28 IR 2203	
312 IAC 13	RA	05-1	28 IR 2203	
312 IAC 16	RA	03-315	27 IR 2339	**28 IR 1315**
312 IAC 16-3-2	A	04-121	27 IR 4097	**28 IR 1682**
312 IAC 16-3-8	A	04-121	27 IR 4099	**28 IR 1684**
312 IAC 16-5-14	A	04-23	27 IR 2532	**28 IR 556**
312 IAC 16-5-19	A	05-14	28 IR 2410	
312 IAC 17	RA	03-315	27 IR 2339	**28 IR 1315**
312 IAC 17-3-1	A	04-23	27 IR 2532	**28 IR 557**
312 IAC 17-3-2	A	04-23	27 IR 2532	**28 IR 557**
312 IAC 17-3-3	A	04-23	27 IR 2532	**28 IR 557**
312 IAC 17-3-4	A	04-23	27 IR 2533	**28 IR 558**
312 IAC 17-3-6	A	04-23	27 IR 2534	**28 IR 558**

312 IAC 17-3-8	A	04-23	27 IR 2534	**28 IR 558**
312 IAC 17-3-9	A	04-23	27 IR 2534	**28 IR 558**
312 IAC 18-3-12	A	04-270	28 IR 1203	
312 IAC 18-3-18	N	04-177	28 IR 1201	
312 IAC 18-3-19	N	04-127	28 IR 1521	
312 IAC 19	RA	03-315	27 IR 2339	**28 IR 1315**
312 IAC 23	RA	05-1	28 IR 2203	
312 IAC 25-4-102				*ERR (28 IR 214)
312 IAC 25-4-114				*ERR (28 IR 214)
312 IAC 25-5-16				*ERR (28 IR 214)
312 IAC 25-6-20				*ERR (28 IR 214)
312 IAC 25-7-1				*ERR (28 IR 214)
312 IAC 26	RA	03-315	27 IR 2339	**28 IR 1315**
TITLE 315 OFFICE OF ENVIRONMENTAL ADJUDICATION				
315 IAC 1	RA	04-71	27 IR 2879	**28 IR 323**
315 IAC 1-2-1	A	04-70	28 IR 990	*CPH (28 IR 1498)
315 IAC 1-3-1	A	04-70	28 IR 991	*CPH (28 IR 1498)
315 IAC 1-3-2	A	04-70	28 IR 991	*CPH (28 IR 1498)
315 IAC 1-3-2.1	N	04-70	28 IR 992	*CPH (28 IR 1498)
315 IAC 1-3-3	A	04-70	28 IR 992	*CPH (28 IR 1498)
315 IAC 1-3-4	A	04-70	28 IR 993	*CPH (28 IR 1498)
315 IAC 1-3-5	A	04-70	28 IR 994	*CPH (28 IR 1498)
315 IAC 1-3-7	A	04-70	28 IR 994	*CPH (28 IR 1498)
315 IAC 1-3-8	A	04-70	28 IR 994	*CPH (28 IR 1498)
315 IAC 1-3-9	A	04-70	28 IR 995	*CPH (28 IR 1498)
315 IAC 1-3-10	A	04-70	28 IR 995	*CPH (28 IR 1498)
315 IAC 1-3-12	A	04-70	28 IR 996	*CPH (28 IR 1498)
315 IAC 1-3-14	A	04-70	28 IR 996	*CPH (28 IR 1498)
315 IAC 1-3-15	N	04-70	28 IR 996	*CPH (28 IR 1498)
TITLE 326 AIR POLLUTION CONTROL BOARD				
326 IAC 1-1-3	A	02-337	26 IR 1997	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 17
	A	04-299	28 IR 1815	*CPH (28 IR 2406)
326 IAC 1-1-3.5	A	02-337	26 IR 1997	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 18
	A	04-299	28 IR 1815	*CPH (28 IR 2406)
326 IAC 1-1-6	N	04-180	28 IR 248	*GRAT (28 IR 2205)
				28 IR 2046
326 IAC 1-2-52	A	03-228	27 IR 3120	**28 IR 1471**
326 IAC 1-2-52.2	N	03-228	27 IR 3121	**28 IR 1471**
326 IAC 1-2-52.4	N	03-228	27 IR 3121	**28 IR 1471**
326 IAC 1-2-65	A	02-337	26 IR 1997	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 18
326 IAC 1-2-82.5	N	03-228	27 IR 3121	**28 IR 1471**
326 IAC 1-2-90	A	02-337	26 IR 1998	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 18
326 IAC 1-3-4	A	03-228	27 IR 3121	**28 IR 1471**
326 IAC 1-4-1	A	04-148	27 IR 3606	**28 IR 1182**
326 IAC 2-2-13	A	02-337	26 IR 1998	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 19
326 IAC 2-2-16	A	02-337	26 IR 1999	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 20
326 IAC 2-5.1-1	RA	04-44	27 IR 3144	**28 IR 791**
326 IAC 2-5.1-2	RA	04-44	27 IR 3145	**28 IR 791**
326 IAC 2-5.5-1	RA	04-44	27 IR 3146	**28 IR 792**
326 IAC 2-5.5-2	RA	04-44	27 IR 3146	**28 IR 793**
326 IAC 2-5.5-3	RA	04-44	27 IR 3146	**28 IR 793**
326 IAC 2-5.5-4	RA	04-44	27 IR 3147	**28 IR 793**
326 IAC 2-5.5-5	RA	04-44	27 IR 3147	**28 IR 794**
326 IAC 2-5.5-6	RA	04-44	27 IR 3147	**28 IR 794**
326 IAC 2-6.1-1	RA	04-44	27 IR 3149	**28 IR 795**
326 IAC 2-6.1-2	RA	04-44	27 IR 3149	**28 IR 795**
326 IAC 2-6.1-3	RA	04-44	27 IR 3149	**28 IR 795**
326 IAC 2-6.1-4	RA	04-44	27 IR 3150	**28 IR 796**
326 IAC 2-6.1-5	RA	04-44	27 IR 3150	**28 IR 796**
326 IAC 2-6.1-6	RA	04-44	27 IR 3151	**28 IR 797**
326 IAC 2-6.1-7	RA	04-44	27 IR 3154	**28 IR 801**
326 IAC 2-7-3	A	02-337	26 IR 2006	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 20
326 IAC 2-7-8	A	02-337	26 IR 2006	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 20
326 IAC 2-7-18	A	02-337	26 IR 2007	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 21
326 IAC 2-8-3	A	02-337	26 IR 2008	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 22
326 IAC 2-9-1	RA	04-44	27 IR 3155	**28 IR 801**
326 IAC 2-9-2.5	RA	04-44	27 IR 3156	**28 IR 802**
326 IAC 2-9-3	RA	04-44	27 IR 3156	**28 IR 803**
326 IAC 2-9-4	RA	04-44	27 IR 3157	**28 IR 803**
326 IAC 2-9-5	RA	04-44	27 IR 3158	**28 IR 805**
326 IAC 2-9-6	RA	04-44	27 IR 3159	**28 IR 805**
326 IAC 2-9-7	A	02-337	26 IR 2009	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 23
	RA	04-44	27 IR 3159	**28 IR 805**
326 IAC 2-9-8	A	02-337	26 IR 2010	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 25
	RA	04-44	27 IR 3160	**28 IR 806**
326 IAC 2-9-9	A	02-337	26 IR 2012	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 26
	RA	04-44	27 IR 3162	**28 IR 808**
326 IAC 2-9-10	A	02-337	26 IR 2013	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 27
	RA	04-44	27 IR 3163	**28 IR 809**
326 IAC 2-9-11	RA	04-44	27 IR 3164	**28 IR 810**
326 IAC 2-9-12	RA	04-44	27 IR 3165	**28 IR 811**
326 IAC 2-9-13	A	02-337	26 IR 2014	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 28
	RA	04-44	27 IR 3165	**28 IR 811**
326 IAC 2-9-14	RA	04-44	27 IR 3167	**28 IR 814**
326 IAC 3-4-1	A	02-337	26 IR 2016	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 30
326 IAC 3-4-3	A	02-337	26 IR 2016	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 31
326 IAC 3-5-2	A	02-337	26 IR 2017	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 32
326 IAC 3-5-3	A	02-337	26 IR 2019	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 33
326 IAC 3-5-4	A	02-337	26 IR 2019	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 34
326 IAC 3-5-5	A	02-337	26 IR 2020	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 34
326 IAC 3-6-1	A	02-337	26 IR 2022	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 36

326 IAC 3-6-3	A	02-337	26 IR 2022	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 37**
326 IAC 3-6-5	A	02-337	26 IR 2023	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 37**
326 IAC 3-7-2	A	02-337	26 IR 2024	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 38**
326 IAC 3-7-4	A	02-337	26 IR 2025	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 40**
326 IAC 5-1-2	A	02-337	26 IR 2026	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 40**
326 IAC 5-1-4	A	02-337	26 IR 2026	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 41**
326 IAC 5-1-5	A	02-337	26 IR 2027	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 41**
326 IAC 6-1-1	R	02-335	28 IR 1813	
326 IAC 6-1-1.5	R	02-335	28 IR 1813	
326 IAC 6-1-2	R	02-335	28 IR 1813	
326 IAC 6-1-3	R	02-335	28 IR 1813	
326 IAC 6-1-4	R	02-335	28 IR 1813	
326 IAC 6-1-5	R	02-335	28 IR 1813	
326 IAC 6-1-6	R	02-335	28 IR 1813	
326 IAC 6-1-7	R	02-335	28 IR 1813	
326 IAC 6-1-8.1	R	02-335	28 IR 1813	
326 IAC 6-1-9	R	02-335	28 IR 1813	
326 IAC 6-1-10.1	R	02-335	28 IR 1813	
326 IAC 6-1-10.2	R	02-335	28 IR 1813	
326 IAC 6-1-11.1	R	02-335	28 IR 1813	
326 IAC 6-1-11.2	R	02-335	28 IR 1813	
326 IAC 6-1-12	A	04-43	28 IR 242	*GRAT (28 IR 2204) **28 IR 2037** *ERR (28 IR 2137)
	R	02-335	28 IR 1813	
326 IAC 6-1-13	A	03-195	27 IR 2318	**28 IR 115**
	R	02-335	28 IR 1813	
326 IAC 6-1-14	R	02-335	28 IR 1813	
326 IAC 6-1-15	R	02-335	28 IR 1813	
326 IAC 6-1-16	R	02-335	28 IR 1813	
326 IAC 6-1-17	R	02-335	28 IR 1813	
326 IAC 6-1-18	R	02-335	28 IR 1813	
326 IAC 6.5	N	02-335	28 IR 1714	
326 IAC 6.5-7-13	A	04-234	28 IR 1814	*CPH (28 IR 2406)
326 IAC 6.8	N	02-335	28 IR 1766	
326 IAC 7-1.1-1	A	00-236	28 IR 632	*CPH (28 IR 982) *CPH (28 IR 1710)
326 IAC 7-1.1-2	A	00-236	28 IR 632	*CPH (28 IR 982) *CPH (28 IR 1710)
326 IAC 7-2-1	A	02-337	26 IR 2028	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 42**
	A	00-236	28 IR 632	*CPH (28 IR 982) *CPH (28 IR 1710)
326 IAC 7-4-1.1	R	00-236	28 IR 644	*CPH (28 IR 982) *CPH (28 IR 1710)
326 IAC 7-4-3	A	03-195	27 IR 2319	**28 IR 117**
326 IAC 7-4-10	A	02-337	26 IR 2029	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 43**
326 IAC 7-4-13	A	03-282	27 IR 2768	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2021**
326 IAC 7-4.1	N	00-236	28 IR 633	*CPH (28 IR 982) *CPH (28 IR 1710)
326 IAC 8-1-4	A	02-337	26 IR 2030	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 44**
326 IAC 8-4-6	A	02-337	26 IR 2032	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 47**
326 IAC 8-4-9	A	02-337	26 IR 2035	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 49**
326 IAC 8-7-7	A	02-337	26 IR 2036	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 51**
326 IAC 8-9-2	A	02-337	26 IR 2037	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 51**
326 IAC 8-9-3	A	02-337	26 IR 2037	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 51**
326 IAC 8-9-4	A	02-337	26 IR 2038	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 52**
326 IAC 8-9-5	A	02-337	26 IR 2040	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 54**
326 IAC 8-9-6	A	02-337	26 IR 2042	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 56**
326 IAC 8-10-7	A	02-337	26 IR 2044	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 58**
326 IAC 8-11-2	A	02-337	26 IR 2044	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 59**
326 IAC 8-11-6	A	02-337	26 IR 2046	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 61**
326 IAC 8-11-7	A	02-337	26 IR 2050	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 64**
326 IAC 8-12-3	A	02-337	26 IR 2050	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 65**
326 IAC 8-12-5	A	02-337	26 IR 2052	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 67**
326 IAC 8-12-6	A	02-337	26 IR 2053	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 68**
326 IAC 8-12-7	A	02-337	26 IR 2054	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 68**
326 IAC 8-13-5	A	02-337	26 IR 2055	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 69**
326 IAC 10-1-2	A	02-337	26 IR 2056	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 70**
326 IAC 10-1-4	A	02-337	26 IR 2057	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 71**
326 IAC 10-1-5	A	02-337	26 IR 2059	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 73**
326 IAC 10-1-6	A	02-337	26 IR 2059	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 74**
326 IAC 11-3-4	A	02-337	26 IR 2060	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 74**

326 IAC 11-7-1	A	02-337	26 IR 2061	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 75**
326 IAC 13-1.1-1	A	02-337	26 IR 2062	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 76**
326 IAC 13-1.1-8	A	02-337	26 IR 2063	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 77**
326 IAC 13-1.1-10	A	02-337	26 IR 2063	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 78**
326 IAC 13-1.1-13	A	02-337	26 IR 2064	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 79**
326 IAC 13-1.1-14	A	02-337	26 IR 2065	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 80**
326 IAC 13-1.1-16	A	02-337	26 IR 2066	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 81**
326 IAC 14-1-1	A	02-337	26 IR 2066	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 81**
326 IAC 14-1-2	A	02-337	26 IR 2067	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 81**
326 IAC 14-1-4	R	02-337	26 IR 2099	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 114**
326 IAC 14-3-1	A	02-337	26 IR 2067	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 82**
326 IAC 14-4-1	A	02-337	26 IR 2067	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 82**
326 IAC 14-5-1	A	02-337	26 IR 2068	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 82**
326 IAC 14-7-1	A	02-337	26 IR 2068	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 83**
326 IAC 14-8-1	A	02-337	26 IR 2068	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 83**
326 IAC 14-8-3	A	02-337	26 IR 2069	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 83**
326 IAC 14-8-4	A	02-337	26 IR 2069	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 84**
326 IAC 14-8-5	A	02-337	26 IR 2069	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 84**
326 IAC 14-9-5	A	02-337	26 IR 2070	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 84**
326 IAC 14-9-8	A	02-337	26 IR 2071	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 85**
326 IAC 14-9-9	A	02-337	26 IR 2071	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 86**
326 IAC 14-10-1	A	02-337	26 IR 2072	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 87**
326 IAC 14-10-2	A	02-337	26 IR 2074	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 88**
326 IAC 14-10-3	A	02-337	26 IR 2076	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 91**
326 IAC 14-10-4	A	02-337	26 IR 2078	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 93**
326 IAC 15-1-2	A	02-337	26 IR 2080	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 95**
326 IAC 15-1-4	A	02-337	26 IR 2083	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 98**
326 IAC 16-3-1	A	02-337	26 IR 2084	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 98**
326 IAC 18-1-1	A	03-283	27 IR 3128	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2022**
326 IAC 18-1-2	A	02-337	26 IR 2084	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 99**
	A	03-283	27 IR 3128	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2022**
326 IAC 18-1-3	A	03-283	27 IR 3130	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2024**
326 IAC 18-1-4	A	03-283	27 IR 3131	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2025**
326 IAC 18-1-5	A	02-337	26 IR 2086	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 101**
	A	03-283	27 IR 3132	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2026**
326 IAC 18-1-6	A	03-283	27 IR 3133	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2027**
326 IAC 18-1-7	A	02-337	26 IR 2087	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 102**
326 IAC 18-1-8	A	02-337	26 IR 2088	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 103**
326 IAC 18-1-9	A	03-283	27 IR 3134	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2028**
326 IAC 18-2-2	A	02-337	26 IR 2088	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 103**
	A	03-283	27 IR 3134	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2028**
326 IAC 18-2-3	A	02-337	26 IR 2090	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 104**
	A	03-283	27 IR 3136	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2030**
326 IAC 18-2-6	A	02-337	26 IR 2096	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 111**
326 IAC 18-2-7	A	02-337	26 IR 2097	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 112**
326 IAC 20-25-1	A	03-264	27 IR 3123	*CPH (27 IR 3590) *GRAT (28 IR 2204) **28 IR 2017**

326 IAC 20-25-2	A	03-264	27 IR 3124	*CPH (27 IR 3590)
				*GRAT (28 IR 2204)
				28 IR 2018
326 IAC 20-56	N	03-264	27 IR 3126	*CPH (27 IR 3590)
				*GRAT (28 IR 2204)
				28 IR 2020
326 IAC 20-57	N	03-284	27 IR 1618	*CPH (27 IR 1937)
				28 IR 119
326 IAC 20-58	N	03-284	27 IR 1619	*CPH (27 IR 1937)
				28 IR 119
326 IAC 20-59	N	03-284	27 IR 1619	*CPH (27 IR 1937)
				28 IR 119
326 IAC 20-60	N	03-284	27 IR 1619	*CPH (27 IR 1937)
				28 IR 119
326 IAC 20-61	N	03-284	27 IR 1619	*CPH (27 IR 1937)
				28 IR 120
326 IAC 20-62	N	03-284	27 IR 1619	*CPH (27 IR 1937)
				28 IR 120
326 IAC 20-63	N	03-285	27 IR 2322	**28 IR 121**
326 IAC 20-64	N	03-285	27 IR 2322	**28 IR 121**
326 IAC 20-65	N	03-285	27 IR 2322	**28 IR 121**
326 IAC 20-66	N	03-285	27 IR 2323	**28 IR 122**
326 IAC 20-67	N	03-285	27 IR 2323	**28 IR 122**
326 IAC 20-68	N	03-285	27 IR 2323	**28 IR 122**
326 IAC 20-69	N	03-285	27 IR 2323	**28 IR 122**
326 IAC 20-70	N	03-284	27 IR 1620	*CPH (27 IR 1937)
				28 IR 120
326 IAC 20-71	N	04-107	27 IR 3168	*CPH (27 IR 3592)
				*CPH (28 IR 234)
				*GRAT (28 IR 2205)
				28 IR 2043
326 IAC 20-72	N	04-107	27 IR 3169	*CPH (27 IR 3592)
				*CPH (28 IR 234)
				*GRAT (28 IR 2205)
				28 IR 2043
326 IAC 20-73	N	04-107	27 IR 3169	*CPH (27 IR 3592)
				*CPH (28 IR 234)
				*GRAT (28 IR 2205)
				28 IR 2044
326 IAC 20-74	N	04-107	27 IR 3169	*CPH (27 IR 3592)
				*CPH (28 IR 234)
				*GRAT (28 IR 2205)
				28 IR 2044
326 IAC 20-75	N	04-107	27 IR 3169	*CPH (27 IR 3592)
				*CPH (28 IR 234)
				*GRAT (28 IR 2205)
				28 IR 2044
326 IAC 20-76	N	04-107	27 IR 3170	*CPH (27 IR 3592)
				*CPH (28 IR 234)
				*GRAT (28 IR 2205)
				28 IR 2044
326 IAC 20-77	N	04-107	27 IR 3170	*CPH (27 IR 3592)
				*CPH (28 IR 234)
				*GRAT (28 IR 2205)
				28 IR 2045
326 IAC 20-78	N	04-107	27 IR 3170	*CPH (27 IR 3592)
				*CPH (28 IR 234)
				*GRAT (28 IR 2205)
				28 IR 2045
326 IAC 20-79	N	04-107	27 IR 3170	*CPH (27 IR 3592)
				*CPH (28 IR 234)
				*GRAT (28 IR 2205)
				28 IR 2045
326 IAC 20-82	N	04-235	28 IR 997	
326 IAC 20-83	N	04-236	28 IR 998	
326 IAC 20-84	N	04-236	28 IR 998	
326 IAC 20-85	N	04-236	28 IR 999	
326 IAC 20-86	N	04-236	28 IR 999	
326 IAC 20-87	N	04-236	28 IR 999	
326 IAC 20-88	N	04-236	28 IR 999	
326 IAC 20-90	N	04-300	28 IR 1816	
326 IAC 20-91	N	04-300	28 IR 1816	
326 IAC 20-92	N	04-300	28 IR 1817	
326 IAC 20-93	N	04-300	28 IR 1817	
326 IAC 20-94	N	04-300	28 IR 1817	
326 IAC 22-1-1	A	02-337	26 IR 2098	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 113
326 IAC 23-1-31	A	02-337	26 IR 2099	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 114

TITLE 327 WATER POLLUTION CONTROL BOARD

327 IAC 1-1-1	A	03-129	27 IR 3608	*GRAT (28 IR 2205)
				28 IR 2046
327 IAC 1-1-2	A	03-129	27 IR 3608	*GRAT (28 IR 2205)
				28 IR 2046
327 IAC 1-1-3	A	03-129	27 IR 3608	*GRAT (28 IR 2205)
				28 IR 2046
327 IAC 2-1-5	A	03-129	27 IR 3608	*GRAT (28 IR 2205)
				28 IR 2047
327 IAC 2-1-6	A	03-129	27 IR 3609	*GRAT (28 IR 2205)
				28 IR 2047
327 IAC 2-1-8	A	03-129	27 IR 3617	*GRAT (28 IR 2205)
				28 IR 2055
327 IAC 2-1-8.1	A	03-129	27 IR 3617	*GRAT (28 IR 2205)
				28 IR 2055
327 IAC 2-1-8.2	A	03-129	27 IR 3618	*GRAT (28 IR 2205)
				28 IR 2056
327 IAC 2-1-8.3	A	03-129	27 IR 3620	*GRAT (28 IR 2205)
				28 IR 2057
327 IAC 2-1-8.9	N	03-129	27 IR 3621	*GRAT (28 IR 2205)
				28 IR 2058
327 IAC 2-1-9	A	03-129	27 IR 3622	*GRAT (28 IR 2205)
				28 IR 2060
327 IAC 2-1-12	A	03-129	27 IR 3627	*GRAT (28 IR 2205)
				28 IR 2064
327 IAC 2-1-13	N	03-129	27 IR 3627	*GRAT (28 IR 2205)
				28 IR 2065
327 IAC 2-1.5-2	A	03-129	27 IR 3631	*GRAT (28 IR 2205)
				28 IR 2068
327 IAC 2-1.5-6	A	03-129	27 IR 3637	*GRAT (28 IR 2205)
				28 IR 2074
327 IAC 2-1.5-8	A	03-129	27 IR 3638	*GRAT (28 IR 2205)
				28 IR 2074
327 IAC 2-1.5-10	A	03-129	27 IR 3650	*GRAT (28 IR 2205)
				28 IR 2084
327 IAC 2-1.5-11	A	03-129	27 IR 3651	*GRAT (28 IR 2205)
				28 IR 2084
327 IAC 2-1.5-16	A	03-129	27 IR 3660	*GRAT (28 IR 2205)
				28 IR 2093
327 IAC 2-1.5-20	A	03-129	27 IR 3662	*GRAT (28 IR 2205)
				28 IR 2096
327 IAC 2-4-3	A	03-129	27 IR 3663	*GRAT (28 IR 2205)
				28 IR 2097
327 IAC 3-2-1.5	N	04-320	28 IR 2192	
327 IAC 3-2-3.5	N	04-320	28 IR 2192	
327 IAC 3-2-5.5	N	04-320	28 IR 2193	
327 IAC 5-1.5-72	A	03-129	27 IR 3663	*GRAT (28 IR 2205)
				28 IR 2097
327 IAC 5-2-1.5	A	03-129	27 IR 3663	*GRAT (28 IR 2205)
				28 IR 2097
327 IAC 5-2-11.1	A	03-129	27 IR 3664	*GRAT (28 IR 2205)
				28 IR 2097
327 IAC 5-2-11.2	A	03-129	27 IR 3668	*GRAT (28 IR 2205)
				28 IR 2101
327 IAC 5-2-11.4	A	03-129	27 IR 3669	*GRAT (28 IR 2205)
				28 IR 2102

327 IAC 5-2-11.5	A	03-129	27 IR 3679	*GRAT (28 IR 2205) **28 IR 2112**
327 IAC 5-2-11.6	A	03-129	27 IR 3689	*GRAT (28 IR 2205) **28 IR 2120**
327 IAC 5-2-13	A	03-129	27 IR 3694	*GRAT (28 IR 2205) **28 IR 2125**
327 IAC 5-2-15	A	03-129	27 IR 3694	*GRAT (28 IR 2205) **28 IR 2126**
327 IAC 5-3.5	N	03-130	28 IR 650	*CPH (28 IR 1197) **28 IR 2349**
327 IAC 8-1-1	A	04-106	28 IR 2163	
327 IAC 8-1-2	A	04-106	28 IR 2164	
327 IAC 8-1-3	A	04-106	28 IR 2164	
327 IAC 8-1-4	A	04-106	28 IR 2165	
327 IAC 8-2-1	A	04-13	28 IR 1206	
327 IAC 8-2-4	A	04-13	28 IR 1210	
327 IAC 8-2-4.1	A	04-13	28 IR 1212	
327 IAC 8-2-4.2	A	04-13	28 IR 1217	
327 IAC 8-2-5.1	A	04-13	28 IR 1220	
327 IAC 8-2-5.2	A	04-13	28 IR 1222	
327 IAC 8-2-5.5	A	04-13	28 IR 1225	
327 IAC 8-2-8.5	A	04-13	28 IR 1228	
327 IAC 8-2-8.7	A	04-13	28 IR 1229	
327 IAC 8-2-9	A	04-13	28 IR 1230	
327 IAC 8-2-10.1	A	04-13	28 IR 1230	
327 IAC 8-2-10.2	A	04-13	28 IR 1233	
327 IAC 8-2-10.3	N	04-13	28 IR 1237	
327 IAC 8-2-13	A	04-13	28 IR 1239	
327 IAC 8-2-34	A	04-13	28 IR 1239	
327 IAC 8-2-34.1	N	04-13	28 IR 1240	
327 IAC 8-2-45	A	04-13	28 IR 1240	
327 IAC 8-2-46	A	04-13	28 IR 1242	
327 IAC 8-2.1-3	A	04-13	28 IR 1244	
327 IAC 8-2.1-4	A	04-13	28 IR 1247	
327 IAC 8-2.1-6	A	04-13	28 IR 1248	
327 IAC 8-2.1-8	A	04-13	28 IR 1255	
327 IAC 8-2.1-9	A	04-13	28 IR 1256	
327 IAC 8-2.1-14	A	04-13	28 IR 1257	
327 IAC 8-2.1-16	A	04-13	28 IR 1257	
327 IAC 8-2.1-17	A	04-13	28 IR 1261	
327 IAC 8-2.6-1	A	04-13	28 IR 1268	
327 IAC 8-2.6-2	A	04-13	28 IR 1269	
327 IAC 8-2.6-2.1	N	04-13	28 IR 1271	
327 IAC 8-2.6-3	A	04-13	28 IR 1273	
327 IAC 8-2.6-4	A	04-13	28 IR 1274	
327 IAC 8-2.6-5	A	04-13	28 IR 1274	
327 IAC 8-3-1	A	04-106	28 IR 2165	
327 IAC 8-3-1.1	A	04-106	28 IR 2166	
327 IAC 8-3-2	A	04-106	28 IR 2166	
327 IAC 8-3-2.1	N	04-106	28 IR 2167	
327 IAC 8-3-3	A	04-106	28 IR 2168	
327 IAC 8-3-8	A	04-106	28 IR 2168	
327 IAC 8-3.1-1	A	04-106	28 IR 2169	
327 IAC 8-3.1-2	A	04-106	28 IR 2169	
327 IAC 8-3.2-1	A	04-106	28 IR 2170	
327 IAC 8-3.2-2	A	04-106	28 IR 2170	
327 IAC 8-3.2-4	A	04-106	28 IR 2171	
327 IAC 8-3.2-8	A	04-106	28 IR 2171	
327 IAC 8-3.2-11	A	04-106	28 IR 2173	
327 IAC 8-3.2-17	A	04-106	28 IR 2173	
327 IAC 8-3.2-18	A	04-106	28 IR 2174	
327 IAC 8-3.2-20	A	04-106	28 IR 2175	
327 IAC 8-3.3-4	A	04-106	28 IR 2175	
327 IAC 8-3.3-5	A	04-106	28 IR 2176	
327 IAC 8-3.3-6	A	04-106	28 IR 2176	
327 IAC 8-3.4-1	A	04-106	28 IR 2176	
327 IAC 8-3.4-2	A	04-106	28 IR 2178	
327 IAC 8-3.4-3	A	04-106	28 IR 2178	
327 IAC 8-3.4-4	A	04-106	28 IR 2179	
327 IAC 8-3.4-8	A	04-106	28 IR 2180	
327 IAC 8-3.4-9	A	04-106	28 IR 2180	
327 IAC 8-3.4-9.1	N	04-106	28 IR 2182	
327 IAC 8-3.4-12	A	04-106	28 IR 2183	
327 IAC 8-3.4-13	A	04-106	28 IR 2183	
327 IAC 8-3.4-14	A	04-106	28 IR 2183	
327 IAC 8-3.4-16	A	04-106	28 IR 2184	
327 IAC 8-3.4-17	A	04-106	28 IR 2185	
327 IAC 8-3.4-23	A	04-106	28 IR 2185	
327 IAC 8-3.4-24	A	04-106	28 IR 2186	
327 IAC 8-3.4-25	A	04-106	28 IR 2187	
327 IAC 8-3.4-27	A	04-106	28 IR 2188	
327 IAC 8-3.5-1	A	04-106	28 IR 2188	
327 IAC 8-3.5-2	A	04-106	28 IR 2189	
327 IAC 8-3.5-5	A	04-106	28 IR 2189	
327 IAC 8-4-1	A	04-106	28 IR 2190	
327 IAC 8-4-2	N	04-106	28 IR 2191	
327 IAC 8-6-1	A	04-106	28 IR 2191	
327 IAC 15-14				*ERR (28 IR 214)
327 IAC 17	N	04-228	28 IR 1288	

TITLE 328 UNDERGROUND STORAGE TANK FINANCIAL ASSURANCE BOARD

328 IAC 1-1-2	A	02-204	27 IR 2778	*CPH (27 IR 3095) **28 IR 123**
328 IAC 1-1-3	A	02-204	27 IR 2778	*CPH (27 IR 3095) **28 IR 123**
328 IAC 1-1-4	A	02-204	27 IR 2778	*CPH (27 IR 3095) **28 IR 124**
328 IAC 1-1-5.1	A	02-204	27 IR 2778	*CPH (27 IR 3095) **28 IR 124**
328 IAC 1-1-7.5	N	02-204	27 IR 2779	*CPH (27 IR 3095) **28 IR 124**
328 IAC 1-1-8	R	02-204	27 IR 2797	*CPH (27 IR 3095) **28 IR 144**
328 IAC 1-1-8.3	N	02-204	27 IR 2779	*CPH (27 IR 3095) **28 IR 124**
328 IAC 1-1-8.5	A	02-204	27 IR 2779	*CPH (27 IR 3095) **28 IR 125**
328 IAC 1-1-9	A	02-204	27 IR 2779	*CPH (27 IR 3095) **28 IR 125**
328 IAC 1-1-10	A	02-204	27 IR 2779	*CPH (27 IR 3095) **28 IR 125**
328 IAC 1-2-1	A	02-204	27 IR 2779	*CPH (27 IR 3095) **28 IR 125**
328 IAC 1-2-3	A	02-204	27 IR 2780	*CPH (27 IR 3095) **28 IR 125**
328 IAC 1-3-1	A	02-204	27 IR 2780	*CPH (27 IR 3095) **28 IR 126**
328 IAC 1-3-1.3	N	02-204	27 IR 2780	*CPH (27 IR 3095) **28 IR 126**
328 IAC 1-3-1.6	N	02-204	27 IR 2781	*CPH (27 IR 3095) **28 IR 127**
328 IAC 1-3-2	A	02-204	27 IR 2781	*CPH (27 IR 3095) **28 IR 127**
328 IAC 1-3-3	A	02-204	27 IR 2781	*CPH (27 IR 3095) **28 IR 127** *ERR (28 IR 608)
328 IAC 1-3-4	A	02-204	27 IR 2783	*CPH (27 IR 3095) **28 IR 129**
328 IAC 1-3-5	A	02-204	27 IR 2784	*CPH (27 IR 3095) **28 IR 129**
328 IAC 1-3-6	A	02-204	27 IR 2791	*CPH (27 IR 3095) **28 IR 137**
328 IAC 1-4-1	A	02-204	27 IR 2791	*CPH (27 IR 3095) **28 IR 137** *ERR (28 IR 608)
328 IAC 1-4-1.5	N	02-204		††**28 IR 140**

328 IAC 1-4-3	A	02-204	27 IR 2794	*CPH (27 IR 3095)
				28 IR 141
				*ERR (28 IR 608)
328 IAC 1-4-4	N	02-204	27 IR 2795	*CPH (27 IR 3095)
				28 IR 141
				*ERR (28 IR 608)
328 IAC 1-4-5	N	02-204		††**28 IR 141**
328 IAC 1-5-1	A	02-204	27 IR 2795	*CPH (27 IR 3095)
				28 IR 142
328 IAC 1-5-2	A	02-204	27 IR 2796	*CPH (27 IR 3095)
				28 IR 142
328 IAC 1-5-3	A	02-204	27 IR 2796	*CPH (27 IR 3095)
				28 IR 143
328 IAC 1-6-1	A	02-204	27 IR 2796	*CPH (27 IR 3095)
				28 IR 143
328 IAC 1-6-2	A	02-204	27 IR 2796	*CPH (27 IR 3095)
				28 IR 143
328 IAC 1-7-2	A	02-204	27 IR 2797	*CPH (27 IR 3095)
				28 IR 144
328 IAC 1-7-3	R	02-204	27 IR 2797	*CPH (27 IR 3095)
				28 IR 144

TITLE 329 SOLID WASTE MANAGEMENT BOARD

329 IAC 3.1-1-7	A	03-312	27 IR 4110	
329 IAC 3.1-6-2	A	03-312	27 IR 4111	
329 IAC 3.1-6-3	A	03-312	27 IR 4112	
329 IAC 3.1-6-6	A	04-318	28 IR 2194	
329 IAC 3.1-7.5	N	03-312	27 IR 4112	
329 IAC 3.1-12-2	A	03-312	27 IR 4113	
329 IAC 3.1-13-2	A	03-312	27 IR 4114	
329 IAC 9-1-1	A	01-161	26 IR 1209	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3177	**28 IR 145**
329 IAC 9-1-4	A	01-161	26 IR 1209	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3177	**28 IR 145**
329 IAC 9-1-10.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**
329 IAC 9-1-10.2	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**
329 IAC 9-1-10.4	N	01-161	26 IR 1209	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3177	**28 IR 146**
329 IAC 9-1-10.6	N	01-161	26 IR 1209	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3178	**28 IR 146**
329 IAC 9-1-10.8	N	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3178	**28 IR 146**
329 IAC 9-1-14	A	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3178	**28 IR 146**
329 IAC 9-1-14.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**
329 IAC 9-1-14.3	N	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3178	**28 IR 146**
329 IAC 9-1-14.5	N	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3178	**28 IR 146**

329 IAC 9-1-14.7	N	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3178	**28 IR 146**
329 IAC 9-1-25	A	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3178	**28 IR 146**
329 IAC 9-1-27	A	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3178	**28 IR 147**
329 IAC 9-1-29.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**
329 IAC 9-1-36	A	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3179	**28 IR 147**
329 IAC 9-1-36.5	N	01-161	27 IR 3179	**28 IR 147**
329 IAC 9-1-39.5	N	01-161	26 IR 1211	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3179	**28 IR 147**
329 IAC 9-1-41	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**
329 IAC 9-1-41.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**
329 IAC 9-1-41.5	N	01-161	26 IR 1211	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3179	**28 IR 147**
329 IAC 9-1-42.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**
329 IAC 9-1-47	A	01-161	26 IR 1211	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3179	**28 IR 147**
329 IAC 9-1-47.1	A	01-161	26 IR 1211	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3179	**28 IR 147**
329 IAC 9-2-1	A	01-161	26 IR 1211	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3179	**28 IR 148**
329 IAC 9-2-2	A	01-161	26 IR 1214	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3182	**28 IR 150**
				*ERR (28 IR 608)

329 IAC 9-2.1-1	A	01-161	26 IR 1215	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3183	**28 IR 151**
329 IAC 9-3-1	A	01-161	26 IR 1216	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3184	**28 IR 152**
329 IAC 9-3-2	N	01-161	26 IR 1218	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3187	**28 IR 155**
329 IAC 9-3.1-1	A	01-161	26 IR 1218	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3187	**28 IR 155**
329 IAC 9-3.1-2	A	01-161	26 IR 1219	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3187	**28 IR 155**
329 IAC 9-3.1-3	A	01-161	26 IR 1219	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3188	**28 IR 156**
329 IAC 9-3.1-4	A	01-161	26 IR 1219	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3188	**28 IR 156**
329 IAC 9-4-3	A	01-161	26 IR 1220	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3189	**28 IR 157**
329 IAC 9-4-4	A	01-161	26 IR 1221	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3189	**28 IR 158**
329 IAC 9-5-1	A	01-161	26 IR 1221	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3190	**28 IR 158**
329 IAC 9-5-2	A	01-161	26 IR 1223	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3191	**28 IR 160**
329 IAC 9-5-3.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**
329 IAC 9-5-3.2	N	01-161	26 IR 1223	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3192	**28 IR 160**
329 IAC 9-5-4.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**

329 IAC 9-5-4.2	N	01-161	26 IR 1224	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3192	**28 IR 160**
329 IAC 9-5-5.1	A	01-161	26 IR 1224	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3193	**28 IR 161**
329 IAC 9-5-6	A	01-161	26 IR 1226	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3196	**28 IR 164**
329 IAC 9-5-7	A	01-161	26 IR 1227	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3196	**28 IR 165**
329 IAC 9-6-1	A	01-161	26 IR 1229	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3199	**28 IR 168**
329 IAC 9-6-2	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**
329 IAC 9-6-2.5	N	01-161	26 IR 1230	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3200	**28 IR 168**
329 IAC 9-6-3	A	01-161	26 IR 1234	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3204	**28 IR 172**
329 IAC 9-6-4	A	01-161	26 IR 1234	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3204	**28 IR 173**
				*ERR (28 IR 1184)
329 IAC 9-6-5	A	01-161	26 IR 1235	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3205	**28 IR 173**
329 IAC 9-7-1	A	01-161	26 IR 1235	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3205	**28 IR 173**
329 IAC 9-7-2	A	01-161	26 IR 1236	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3206	**28 IR 174**
329 IAC 9-7-4	A	01-161	26 IR 1237	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3207	**28 IR 175**
329 IAC 9-7-5	A	01-161	27 IR 3209	**28 IR 177**
329 IAC 9-7-6	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**

329 IAC 9-8-13				*ERR (28 IR 2391)
329 IAC 10-2-112	A	04-256	28 IR 1301	
329 IAC 10-8.2				*ERR (28 IR 608)
329 IAC 10-9-2				*ERR (28 IR 608)
329 IAC 10-9-4				*ERR (28 IR 608)
				*ERR (28 IR 1485)
329 IAC 10-11-6.5	N	04-256	28 IR 1301	
329 IAC 10-20-14.1				*ERR (28 IR 608)
329 IAC 10-36-19				*ERR (28 IR 608)
329 IAC 11-3-2				*ERR (28 IR 608)
329 IAC 11-8-2.5				*ERR (28 IR 608)
329 IAC 11-19-3				*ERR (28 IR 608)
329 IAC 11-20-1				*ERR (27 IR 4023)
329 IAC 12-8-4	A	03-286	27 IR 3696	*GRAT (28 IR 2204)
				28 IR 2127
329 IAC 12-8-5	A	03-286	27 IR 3697	*GRAT (28 IR 2204)
				28 IR 2128
329 IAC 12-9-2	A	03-286	27 IR 3698	*GRAT (28 IR 2204)
				28 IR 2128
329 IAC 13-3-1	A	03-312	27 IR 4115	
329 IAC 13-3-4	N	03-312	27 IR 4116	
329 IAC 13-9-5	A	03-312	27 IR 4117	
329 IAC 15-1-1				*ER (28 IR 214)

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

345 IAC 1-2.5	N	04-248	28 IR 1818	
345 IAC 1-3-6.5	R	04-147	27 IR 4136	
345 IAC 1-3-7	A	04-147	27 IR 4120	
345 IAC 1-3-9	R	04-147	27 IR 4136	
345 IAC 1-3-10	A	04-147	27 IR 4121	
345 IAC 1-3-31	A	04-287	28 IR 1833	
345 IAC 2-4.1	R	04-147	27 IR 4136	
345 IAC 2.5	N	04-147	27 IR 4121	
345 IAC 4-4-1	A	04-135	27 IR 4118	**28 IR 1473**
345 IAC 6-2	N	04-158	28 IR 1000	**28 IR 2353**
345 IAC 7-4.5	N	04-248	28 IR 1820	
345 IAC 7-5-12	A	04-147	27 IR 4135	
345 IAC 7-5-15.1	A	04-16	27 IR 2797	**28 IR 559**
345 IAC 7-5-22	A	04-16	27 IR 2798	**28 IR 559**
345 IAC 8-2-1.1	A	04-286	28 IR 1821	
345 IAC 8-2-1.5	A	04-286	28 IR 1823	
345 IAC 8-2-1.6	N	04-286	28 IR 1824	
345 IAC 8-2-1.7	A	04-286	28 IR 1824	
345 IAC 8-2-1.9	A	04-286	28 IR 1825	
345 IAC 8-2-4	A	04-286	28 IR 1826	
345 IAC 8-3-1	A	04-286	28 IR 1828	
345 IAC 8-3-2	A	04-286	28 IR 1829	
345 IAC 8-3-12	N	04-286	28 IR 1829	
345 IAC 8-4-1	A	04-286	28 IR 1830	
345 IAC 10-2-5	N	04-135	27 IR 4119	**28 IR 1473**
345 IAC 10-2.1-1	A	04-135	27 IR 4119	**28 IR 1474**

TITLE 355 STATE CHEMIST OF THE STATE OF INDIANA

355 IAC 2-1-1	A	04-312	28 IR 1838	
355 IAC 2-1-6	A	04-312	28 IR 1838	
355 IAC 2-2-1	A	04-312	28 IR 1839	
355 IAC 2-2-1.5	N	04-312	28 IR 1839	
355 IAC 2-2-6	A	04-312	28 IR 1839	
355 IAC 2-2-9	A	04-312	28 IR 1839	
355 IAC 2-2-10	A	04-312	28 IR 1839	
355 IAC 2-2-13	A	04-312	28 IR 1840	
355 IAC 2-2-14	A	04-312	28 IR 1840	
355 IAC 2-2-15	A	04-312	28 IR 1840	
355 IAC 2-2-17	A	04-312	28 IR 1840	
355 IAC 2-3-4	A	04-312	28 IR 1840	
355 IAC 2-3-6	A	04-312	28 IR 1841	
355 IAC 2-3-8	A	04-312	28 IR 1841	
355 IAC 2-3-11	A	04-312	28 IR 1841	
355 IAC 2-3-12	A	04-312	28 IR 1841	
355 IAC 2-4-1	A	04-312	28 IR 1842	
355 IAC 2-4-4	R	04-312	28 IR 1846	
355 IAC 2-5-1	A	04-312	28 IR 1842	
355 IAC 2-5-2	A	04-312	28 IR 1843	
355 IAC 2-5-3	A	04-312	28 IR 1844	
355 IAC 2-5-4	A	04-312	28 IR 1844	
355 IAC 2-5-6	A	04-312	28 IR 1844	
355 IAC 2-5-8	A	04-312	28 IR 1844	
355 IAC 2-5-12	A	04-312	28 IR 1845	
355 IAC 2-5-12.5	A	04-312	28 IR 1845	
355 IAC 2-5-13	A	04-312	28 IR 1846	
355 IAC 2-5-14	R	04-312	28 IR 1846	
355 IAC 2-6-1.5	A	04-312	28 IR 1846	
355 IAC 2-6-2	R	04-312	28 IR 1846	
355 IAC 2-8	R	04-312	28 IR 1846	
355 IAC 2-9-1	A	04-312	28 IR 1846	
355 IAC 4-2-2	A	04-309	28 IR 1834	
355 IAC 4-2-8	A	04-309	28 IR 1834	
355 IAC 4-5-1	A	04-310	28 IR 1835	
355 IAC 4-5-2	A	04-310	28 IR 1836	
355 IAC 4-5-3	A	04-310	28 IR 1836	
355 IAC 4-5-4	R	04-310	28 IR 1836	
355 IAC 4-5-5	R	04-310	28 IR 1836	
355 IAC 4-5-6	R	04-310	28 IR 1836	
355 IAC 4-5-11	R	04-310	28 IR 1836	
355 IAC 4-6-1	A	04-311	28 IR 1837	
355 IAC 4-6-2	R	04-311	28 IR 1837	
355 IAC 4-6-3	A	04-311	28 IR 1837	
355 IAC 4-6-4	R	04-311	28 IR 1838	
355 IAC 4-6-6	R	04-311	28 IR 1838	
355 IAC 4-6-10	R	04-311	28 IR 1838	

TITLE 357 INDIANA PESTICIDE REVIEW BOARD

357 IAC 1-6-1	A	04-160	28 IR 253	**28 IR 1689**
357 IAC 1-6-2	A	04-160	28 IR 254	**28 IR 1690**
357 IAC 1-6-3	R	04-160	28 IR 257	**28 IR 1693**
357 IAC 1-6-4	A	04-160	28 IR 256	**28 IR 1692**
357 IAC 1-6-5	A	04-160	28 IR 256	**28 IR 1692**
357 IAC 1-6-6	A	04-160	28 IR 256	**28 IR 1693**
357 IAC 1-6-7	N	04-160	28 IR 257	**28 IR 1693**
357 IAC 1-6-8	N	04-160	28 IR 257	**28 IR 1693**
357 IAC 1-7-1	A	04-159	28 IR 249	**28 IR 1685**
357 IAC 1-7-2	A	04-159	28 IR 250	**28 IR 1686**
357 IAC 1-7-3	R	04-159	28 IR 252	**28 IR 1689**
357 IAC 1-7-4	A	04-159	28 IR 251	**28 IR 1687**
357 IAC 1-7-5	A	04-159	28 IR 252	**28 IR 1688**
357 IAC 1-7-6	A	04-159	28 IR 252	**28 IR 1688**
357 IAC 1-7-7	N	04-159	28 IR 252	**28 IR 1688**
357 IAC 1-7-8	N	04-159	28 IR 252	**28 IR 1689**

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

405 IAC 1-1-3.1	N	04-321	28 IR 2196	
405 IAC 1-1-5	A	04-178	28 IR 258	*NRA (28 IR 1497)
				28 IR 2129
405 IAC 1-1.5-1	A	04-142	27 IR 3699	*NRA (28 IR 619)
				28 IR 815
				*ERR (28 IR 970)
405 IAC 1-1.5-2	A	04-178	28 IR 259	*NRA (28 IR 1497)
				28 IR 2131
405 IAC 1-1.6	N	04-142	27 IR 3699	*NRA (28 IR 619)
				28 IR 816
				*ERR (28 IR 970)
405 IAC 1-5-1	A	04-219	28 IR 655	*NRA (28 IR 1497)
				28 IR 2134
405 IAC 2-2-3	A	04-319	28 IR 1847	
405 IAC 2-3-10	A	03-263	27 IR 1210	*ARR (27 IR 4024)
				*NRA (27 IR 4044)
				28 IR 178
	A	04-321	28 IR 2196	

405 IAC 2-9-5	A	04-319	28 IR 1848	
405 IAC 5-1-5	A	04-178	28 IR 260	*NRA (28 IR 1497) **28 IR 2131**
405 IAC 5-3-13	A	04-178	28 IR 260	*NRA (28 IR 1497) **28 IR 2132**
405 IAC 5-9-1	A	04-178	28 IR 261	*NRA (28 IR 1497) **28 IR 2132**
405 IAC 5-19-1	A	04-178	28 IR 261	*NRA (28 IR 1497) **28 IR 2133**
405 IAC 5-19-3	A	03-207	27 IR 267	*AROC (27 IR 2342)
405 IAC 5-19-10	A	04-178	28 IR 262	*NRA (28 IR 1497) **28 IR 2134**
405 IAC 5-26-5	A	04-178	28 IR 262	*NRA (28 IR 1497) **28 IR 2134**
405 IAC 6-2-5	A	04-95	27 IR 3210	*NRA (27 IR 4044) **28 IR 179**
405 IAC 6-3-3	A	04-95	27 IR 3210	*NRA (27 IR 4044) **28 IR 180**
405 IAC 6-4-2	A	04-95	27 IR 3210	*NRA (27 IR 4044) **28 IR 180**
405 IAC 6-4-3	A	04-95	27 IR 3211	*NRA (27 IR 4044) **28 IR 180**
405 IAC 6-5-1	A	04-95	27 IR 3211	*NRA (27 IR 4044) **28 IR 181**
405 IAC 6-5-2	A	04-95	27 IR 3211	*NRA (27 IR 4044) **28 IR 181**
405 IAC 6-5-3	A	04-95	27 IR 3211	*NRA (27 IR 4044) **28 IR 181**
405 IAC 6-5-4	A	04-95	27 IR 3212	*NRA (27 IR 4044) **28 IR 181**
405 IAC 6-5-6	A	04-95	27 IR 3212	*NRA (27 IR 4044) **28 IR 182**

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

410 IAC 1-6	RA	05-20	28 IR 2458	
410 IAC 6-7.2-28				*ERR (28 IR 1695)
410 IAC 6-7.2-29				*ERR (28 IR 2391)
410 IAC 6-9-3				*ERR (28 IR 1695)
410 IAC 6-12-0.5	N	03-276	27 IR 3212	**28 IR 818**
410 IAC 6-12-1	A	03-276	27 IR 3212	**28 IR 818**
410 IAC 6-12-2	R	03-276	27 IR 3216	**28 IR 821**
410 IAC 6-12-3	A	03-276	27 IR 3213	**28 IR 818**
410 IAC 6-12-3.1	N	03-276	27 IR 3213	**28 IR 818**
410 IAC 6-12-3.2	N	03-276	27 IR 3213	**28 IR 818**
410 IAC 6-12-4	A	03-276	27 IR 3213	**28 IR 818**
410 IAC 6-12-5	R	03-276	27 IR 3216	**28 IR 821**
410 IAC 6-12-6	R	03-276	27 IR 3216	**28 IR 821**
410 IAC 6-12-7	A	03-276	27 IR 3213	**28 IR 818**
410 IAC 6-12-8	A	03-276	27 IR 3213	**28 IR 819**
410 IAC 6-12-9	A	03-276	27 IR 3214	**28 IR 820**
410 IAC 6-12-10	A	03-276	27 IR 3215	**28 IR 820**
410 IAC 6-12-11	A	03-276	27 IR 3215	**28 IR 820**
410 IAC 6-12-12	A	03-276	27 IR 3215	**28 IR 820**
410 IAC 6-12-13	A	03-276	27 IR 3215	**28 IR 820**
410 IAC 6-12-14	A	03-276	27 IR 3215	**28 IR 821**
410 IAC 6-12-15	R	03-276	27 IR 3216	**28 IR 821**
410 IAC 6-12-17	N	03-276	27 IR 3216	**28 IR 821**
410 IAC 7-20	R	04-60	27 IR 3301	**28 IR 906**
410 IAC 7-21-34				*ERR (28 IR 1695)
410 IAC 7-23-1	A	04-62	27 IR 3301	**28 IR 908**
410 IAC 7-24	N	04-60	27 IR 3216	**28 IR 822** *ERR (28 IR 1485)
410 IAC 15-2.1	RA	05-20	28 IR 2458	
410 IAC 15-2.2	RA	05-20	28 IR 2458	
410 IAC 15-2.3	RA	05-20	28 IR 2458	
410 IAC 15-2.4	RA	05-20	28 IR 2458	
410 IAC 15-2.5	RA	05-20	28 IR 2458	
410 IAC 15-2.6	RA	05-20	28 IR 2458	
410 IAC 15-2.6-1				*ERR (28 IR 1695)
410 IAC 15-2.7	RA	05-20	28 IR 2458	
410 IAC 16.2-1.1-19.3	N	04-7	27 IR 2542	**28 IR 189**
410 IAC 16.2-3.1-2	A	03-297	27 IR 2536	**28 IR 182**
	A	04-7	27 IR 2542	**28 IR 189**
410 IAC 16.2-3.1-21				*ERR (28 IR 1695)
410 IAC 16.2-3.1-53	N	04-7	27 IR 2545	**28 IR 192**
410 IAC 16.2-5-1.1	A	03-297	27 IR 2539	**28 IR 185**
410 IAC 16.2-5-1.4	A	04-7	27 IR 2547	**28 IR 193**
410 IAC 16.2-5-1.5				*ERR (28 IR 1695)
410 IAC 16.2-5-1.6				*ERR (28 IR 1695)
410 IAC 16.2-5-5.1				*ERR (28 IR 1695)
410 IAC 16.2-5-13	N	04-7	27 IR 2548	**28 IR 194**
410 IAC 21-3-6	R	04-161	28 IR 657	**28 IR 2356**
410 IAC 21-3-8	A	04-161	28 IR 656	**28 IR 2355**
410 IAC 21-3-9	A	04-161	28 IR 656	**28 IR 2355**

TITLE 440 DIVISION OF MENTAL HEALTH AND ADDICTION

440 IAC 7.5-1-1	A	04-229	28 IR 657	*NRA (28 IR 1497) **28 IR 2356**
440 IAC 7.5-2-1	A	04-229	28 IR 660	*NRA (28 IR 1497) **28 IR 2359**
440 IAC 7.5-2-8	A	04-229	28 IR 661	*NRA (28 IR 1497) **28 IR 2359**
440 IAC 7.5-2-12	A	04-229	28 IR 661	*NRA (28 IR 1497) **28 IR 2360**
440 IAC 7.5-2-13	A	04-229	28 IR 662	*NRA (28 IR 1497) **28 IR 2361**
440 IAC 7.5-3-3	A	04-229	28 IR 663	*NRA (28 IR 1497) **28 IR 2362**
440 IAC 7.5-3-4	A	04-229	28 IR 664	*NRA (28 IR 1497) **28 IR 2363**
440 IAC 7.5-3-7	A	04-229	28 IR 664	*NRA (28 IR 1497) **28 IR 2363**
440 IAC 7.5-4-4	A	04-229		*NRA (28 IR 1497) ††**28 IR 2363**
440 IAC 7.5-4-7	A	04-229	28 IR 664	*NRA (28 IR 1497) **28 IR 2364**
440 IAC 7.5-4-8	A	04-229	28 IR 665	*NRA (28 IR 1497) **28 IR 2364**
440 IAC 7.5-5-1	A	04-229	28 IR 665	*NRA (28 IR 1497) **28 IR 2364**
440 IAC 7.5-8-1	A	04-229	28 IR 666	*NRA (28 IR 1497) **28 IR 2365**
440 IAC 7.5-8-2	A	04-229	28 IR 666	*NRA (28 IR 1497) **28 IR 2365**
440 IAC 7.5-8-3	A	04-229	28 IR 666	*NRA (28 IR 1497) **28 IR 2365**
440 IAC 7.5-9-1	A	04-229	28 IR 666	*NRA (28 IR 1497) **28 IR 2365**
440 IAC 7.5-9-2	A	04-229	28 IR 666	*NRA (28 IR 1497) **28 IR 2366**
440 IAC 7.5-9-3	A	04-229	28 IR 667	*NRA (28 IR 1497) **28 IR 2366**
440 IAC 7.5-10-1	A	04-229	28 IR 667	*NRA (28 IR 1497) **28 IR 2366**
440 IAC 7.5-10-2	A	04-229	28 IR 667	*NRA (28 IR 1497) **28 IR 2366**
440 IAC 7.5-10-3	N	04-229	28 IR 667	*NRA (28 IR 1497) **28 IR 2367**
440 IAC 7.5-11	N	04-229	28 IR 667	*NRA (28 IR 1497) **28 IR 2367**

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

460 IAC 1-10	N	03-231	27 IR 3303	*NRA (28 IR 233) **28 IR 910**
460 IAC 1.1	N	03-245	27 IR 2799	*AROC (27 IR 3344) *NRA (28 IR 233) *GRAT (28 IR 2204) **28 IR 912**

460 IAC 1-3.4	N	04-75	28 IR 1002	*NRA (28 IR 1497) *AROC (28 IR 2461)
460 IAC 1-8-3	A	04-199	28 IR 1007	*NRA (28 IR 1497)
460 IAC 1-8-11	N	04-199	28 IR 1007	*NRA (28 IR 1497)
460 IAC 1-8-12	N	04-199	28 IR 1008	*NRA (28 IR 1497)
460 IAC 1-8-13	N	04-199	28 IR 1008	*NRA (28 IR 1497)
460 IAC 1-11	N	04-136	28 IR 1004	*NRA (28 IR 1497)
460 IAC 2-2.1	N	04-76	27 IR 3701	*NRA (28 IR 233) **28 IR 2368**
460 IAC 3.5-2-3	N	04-269	28 IR 1303	*AWR (28 IR 1697)

TITLE 470 DIVISION OF FAMILY AND CHILDREN

470 IAC 3-1.1-0.5	A	04-77	27 IR 2837	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-1	A	04-77	27 IR 2838	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-2	A	04-77	27 IR 2838	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-4	A	04-77	27 IR 2838	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-6	A	04-77	27 IR 2838	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-7.2	A	04-77	27 IR 2838	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-7.4	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-8	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-9	R	04-77	27 IR 2857	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-10	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-12	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-12.5	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-13	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-14	A	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-15	A	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-16	A	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-20	A	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-20.1	N	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-22.5	A	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-24	A	04-77	27 IR 2841	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-28	A	04-77	27 IR 2841	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-28.5	A	04-77	27 IR 2842	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-29	A	04-77	27 IR 2842	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-29.5	A	04-77	27 IR 2842	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-32	R	04-77	27 IR 2857	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)

470 IAC 3-1.1-32.1	N	04-77	27 IR 2843	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-33	A	04-77	27 IR 2845	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-33.5	A	04-77	27 IR 2845	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-34	A	04-77	27 IR 2845	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-35	A	04-77	27 IR 2846	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-36.5	A	04-77	27 IR 2846	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-36.6	N	04-77	27 IR 2846	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-37	A	04-77	27 IR 2846	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-38	A	04-77	27 IR 2847	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-38.5	N	04-77	27 IR 2847	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-39	A	04-77	27 IR 2848	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-40	A	04-77	27 IR 2848	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-41	A	04-77	27 IR 2848	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-41.1	N	04-77	27 IR 2848	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-41.2	N	04-77	27 IR 2848	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-42	A	04-77	27 IR 2849	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-44	A	04-77	27 IR 2849	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-44.5	N	04-77	27 IR 2850	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-45	A	04-77	27 IR 2850	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-45.5	N	04-77	27 IR 2850	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-46	A	04-77	27 IR 2851	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-47	A	04-77	27 IR 2852	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-48	A	04-77	27 IR 2852	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-50	N	04-77	27 IR 2853	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-51	N	04-77	27 IR 2853	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.2-2	A	04-77	27 IR 2853	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.2-3	A	04-77	27 IR 2853	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.2-3.2	N	04-77	27 IR 2853	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)

470 IAC 3-1.2-4	A	04-77	27 IR 2854	*NRA (28 IR 1196)
				*AROC (28 IR 1317)
				*ARR (28 IR 2140)
				*GRAT (28 IR 2205)
				*AWR (28 IR 2393)
470 IAC 3-1.2-5	A	04-77	27 IR 2854	*NRA (28 IR 1196)
				*AROC (28 IR 1317)
				*ARR (28 IR 2140)
				*GRAT (28 IR 2205)
				*AWR (28 IR 2393)
470 IAC 3-1.2-6	A	04-77	27 IR 2854	*NRA (28 IR 1196)
				*AROC (28 IR 1317)
				*ARR (28 IR 2140)
				*GRAT (28 IR 2205)
				*AWR (28 IR 2393)
470 IAC 3-1.2-7	A	04-77	27 IR 2855	*NRA (28 IR 1196)
				*AROC (28 IR 1317)
				*ARR (28 IR 2140)
				*GRAT (28 IR 2205)
				*AWR (28 IR 2393)
470 IAC 3-1.2-8	N	04-77	27 IR 2855	*NRA (28 IR 1196)
				*AROC (28 IR 1317)
				*ARR (28 IR 2140)
				*GRAT (28 IR 2205)
				*AWR (28 IR 2393)
470 IAC 3-1.3-1	A	04-77	27 IR 2855	*NRA (28 IR 1196)
				*AROC (28 IR 1317)
				*ARR (28 IR 2140)
				*GRAT (28 IR 2205)
				*AWR (28 IR 2393)
470 IAC 3-1.3-2	N	04-77	27 IR 2855	*NRA (28 IR 1196)
				*AROC (28 IR 1317)
				*ARR (28 IR 2140)
				*GRAT (28 IR 2205)
				*AWR (28 IR 2393)
470 IAC 3-1.3-3	N	04-77	27 IR 2855	*NRA (28 IR 1196)
				*AROC (28 IR 1317)
				*ARR (28 IR 2140)
				*GRAT (28 IR 2205)
				*AWR (28 IR 2393)
470 IAC 3-1.3-4	N	04-77	27 IR 2856	*NRA (28 IR 1196)
				*AROC (28 IR 1317)
				*ARR (28 IR 2140)
				*GRAT (28 IR 2205)
				*AWR (28 IR 2393)
470 IAC 3-1.3-5	N	04-77	27 IR 2856	*NRA (28 IR 1196)
				*AROC (28 IR 1317)
				*ARR (28 IR 2140)
				*GRAT (28 IR 2205)
				*AWR (28 IR 2393)
470 IAC 3-1.3-6	N	04-77	27 IR 2856	*NRA (28 IR 1196)
				*AROC (28 IR 1317)
				*ARR (28 IR 2140)
				*GRAT (28 IR 2205)
				*AWR (28 IR 2393)
470 IAC 3-1.3-7	N	04-77	27 IR 2856	*NRA (28 IR 1196)
				*AROC (28 IR 1317)
				*ARR (28 IR 2140)
				*GRAT (28 IR 2205)
				*AWR (28 IR 2393)
470 IAC 3-4.8	N	03-232	27 IR 1626	*AROC (27 IR 2882)
				*NRA (27 IR 4044)
				28 IR 196
470 IAC 3-18	N	03-233	27 IR 1627	*AROC (27 IR 3345)
				*NRA (28 IR 233)
				28 IR 950

TITLE 511 INDIANA STATE BOARD OF EDUCATION

511 IAC 1-3-1	A	04-101	27 IR 3305	**28 IR 965**
511 IAC 1-9	RA	04-47	27 IR 2879	**28 IR 323**
511 IAC 5-2-4.5	N	04-214	28 IR 668	
511 IAC 6-7-1	RA	04-47	27 IR 2879	**28 IR 323**
511 IAC 6-7-6	RA	04-47	27 IR 2879	**28 IR 323**
511 IAC 6-7-6.5	A	04-36	27 IR 2552	**28 IR 959**
511 IAC 6-7.1	N	04-277	28 IR 1303	
511 IAC 6-7.1-4.5	N	04-276	28 IR 1849	
511 IAC 6-9.1	RA	05-15	28 IR 2459	
511 IAC 6.1-2-2.5	RA	04-47	27 IR 2879	**28 IR 323**
511 IAC 6.1-5-4	RA	04-47	27 IR 2879	**28 IR 323**
511 IAC 6.1-5.1-1	A	04-317	28 IR 2198	
511 IAC 6.1-5.1-2	A	04-36	27 IR 2553	**28 IR 960**
511 IAC 6.1-5.1-3	A	04-36	27 IR 2553	**28 IR 960**
511 IAC 6.1-5.1-4	A	04-36	27 IR 2554	**28 IR 961**
511 IAC 6.1-5.1-5	A	04-36	27 IR 2555	**28 IR 962**
511 IAC 6.1-5.1-6	A	04-36	27 IR 2555	**28 IR 962**
511 IAC 6.1-5.1-8	A	04-36	27 IR 2556	**28 IR 963**
511 IAC 6.1-5.1-9	A	04-36	27 IR 2557	**28 IR 964**
	A	04-317	28 IR 2199	
511 IAC 6.1-5.1-10.1	A	04-22	27 IR 2550	**28 IR 957**
	A	04-317	28 IR 2200	
511 IAC 6.1-5.1-11	A	04-317	28 IR 2202	
511 IAC 8	RA	04-47	27 IR 2879	**28 IR 323**

TITLE 514 INDIANA SCHOOL FOR THE DEAF BOARD

514 IAC	N	03-298	27 IR 1634	**28 IR 197**

TITLE 515 PROFESSIONAL STANDARDS BOARD

515 IAC 1-4-1	A	03-320	27 IR 2558	*ARR (28 IR 610)
				28 IR 1475
515 IAC 1-4-2	A	03-320	27 IR 2558	*ARR (28 IR 610)
				28 IR 1475
515 IAC 8-1-23	A	03-321	27 IR 2330	*ARR (28 IR 610)
				28 IR 1477
515 IAC 8-1-42	A	03-321	27 IR 2330	*ARR (28 IR 610)
				28 IR 1478
515 IAC 9	N	03-11	26 IR 2451	*CPH (26 IR 2648)
				27 IR 1169
515 IAC 9-1-22	A	03-322	27 IR 2331	*ARR (28 IR 610)
				28 IR 1479
515 IAC 10	N	04-197	28 IR 263	
515 IAC 12	N	04-141	27 IR 3703	**28 IR 2135**

TITLE 540 INDIANA EDUCATION SAVINGS AUTHORITY

540 IAC 1-1-11	RA	04-54	27 IR 2880	*CPH (27 IR 3096)
				28 IR 324
540 IAC 1-1-17	RA	04-54	27 IR 2880	*CPH (27 IR 3096)
				28 IR 324

TITLE 646 DEPARTMENT OF WORKFORCE DEVELOPMENT

646 IAC 3-1-12	N	03-317	27 IR 2858	**28 IR 560**
646 IAC 3-1-13	N	03-317	27 IR 2858	**28 IR 561**
646 IAC 3-4-11	N	03-317	27 IR 2858	**28 IR 561**
646 IAC 3-5-1	A	03-317	27 IR 2859	**28 IR 561**

TITLE 655 BOARD OF FIREFIGHTING PERSONNEL STANDARDS AND EDUCATION

655 IAC 1-1-5.1	A	04-138	28 IR 1009	*AROC (28 IR 1073)
	A	04-297	28 IR 2415	
655 IAC 1-2.1-3	A	04-138	28 IR 1012	*AROC (28 IR 1073)
655 IAC 1-2.1-4	A	04-138	28 IR 1012	*AROC (28 IR 1073)
655 IAC 1-2.1-5	A	04-138	28 IR 1013	*AROC (28 IR 1073)
655 IAC 1-2.1-6	A	04-138	28 IR 1013	*AROC (28 IR 1073)
655 IAC 1-2.1-6.1	A	04-138	28 IR 1013	*AROC (28 IR 1073)
655 IAC 1-2.1-6.2	A	04-138	28 IR 1013	*AROC (28 IR 1073)
655 IAC 1-2.1-6.3	A	04-138	28 IR 1014	*AROC (28 IR 1073)
655 IAC 1-2.1-6.4	A	04-138	28 IR 1014	*AROC (28 IR 1073)

655 IAC 1-2.1-7.1	N	04-138	28 IR 1014	*AROC (28 IR 1073)
655 IAC 1-2.1-8	A	04-138	28 IR 1016	*AROC (28 IR 1073)
655 IAC 1-2.1-9	A	04-138	28 IR 1016	*AROC (28 IR 1073)
655 IAC 1-2.1-10	A	04-138	28 IR 1016	*AROC (28 IR 1073)
655 IAC 1-2.1-11	A	04-138	28 IR 1017	*AROC (28 IR 1073)
655 IAC 1-2.1-12	A	04-138	28 IR 1017	*AROC (28 IR 1073)
655 IAC 1-2.1-13	A	04-138	28 IR 1017	*AROC (28 IR 1073)
655 IAC 1-2.1-14	A	04-138	28 IR 1017	*AROC (28 IR 1073)
655 IAC 1-2.1-15	A	04-138	28 IR 1017	*AROC (28 IR 1073)
655 IAC 1-2.1-20	A	04-138	28 IR 1018	*AROC (28 IR 1073)
655 IAC 1-2.1-22	A	04-138	28 IR 1018	*AROC (28 IR 1073)
655 IAC 1-2.1-23	A	04-138	28 IR 1018	*AROC (28 IR 1073)
655 IAC 1-2.1-23.1	A	04-138	28 IR 1019	*AROC (28 IR 1073)
655 IAC 1-2.1-24	A	04-138	28 IR 1019	*AROC (28 IR 1073)
655 IAC 1-2.1-24.1	A	04-138	28 IR 1019	*AROC (28 IR 1073)
655 IAC 1-2.1-24.2	A	04-138	28 IR 1019	*AROC (28 IR 1073)
655 IAC 1-2.1-24.3	A	04-138	28 IR 1019	*AROC (28 IR 1073)
655 IAC 1-2.1-75	A	04-138	28 IR 1020	*AROC (28 IR 1073)
655 IAC 1-2.1-75.2	A	04-138	28 IR 1020	*AROC (28 IR 1073)
655 IAC 1-2.1-75.3	A	04-138	28 IR 1020	*AROC (28 IR 1073)
655 IAC 1-2.1-75.4	A	04-138	28 IR 1021	*AROC (28 IR 1073)
655 IAC 1-2.1-75.5	A	04-138	28 IR 1021	*AROC (28 IR 1073)
655 IAC 1-2.1-76.1	A	04-138	28 IR 1022	*AROC (28 IR 1073)
655 IAC 1-2.1-76.2	R	04-138	28 IR 1029	*AROC (28 IR 1073)
655 IAC 1-2.1-76.3	R	04-138	28 IR 1029	*AROC (28 IR 1073)
655 IAC 1-2.1-96	N	04-138	28 IR 1022	*AROC (28 IR 1073)
655 IAC 1-2.1-97	N	04-138	28 IR 1022	*AROC (28 IR 1073)
655 IAC 1-2.1-98	N	04-138	28 IR 1023	*AROC (28 IR 1073)
655 IAC 1-2.1-99	N	04-138	28 IR 1023	*AROC (28 IR 1073)
655 IAC 1-2.1-100	N	04-138	28 IR 1023	*AROC (28 IR 1073)
655 IAC 1-2.1-101	N	04-138	28 IR 1024	*AROC (28 IR 1073)
655 IAC 1-2.1-102	N	04-138	28 IR 1024	*AROC (28 IR 1073)
655 IAC 1-2.1-103	N	04-138	28 IR 1025	*AROC (28 IR 1073)
655 IAC 1-2.1-104	N	04-138	28 IR 1025	*AROC (28 IR 1073)
655 IAC 1-2.1-105	N	04-138	28 IR 1026	*AROC (28 IR 1073)
655 IAC 1-2.1-106	N	04-138	28 IR 1026	*AROC (28 IR 1073)
655 IAC 1-2.1-107	N	04-138	28 IR 1027	*AROC (28 IR 1073)
655 IAC 1-2.1-108	N	04-138	28 IR 1027	*AROC (28 IR 1073)
655 IAC 1-2.1-109	N	04-138	28 IR 1027	*AROC (28 IR 1073)
655 IAC 1-2.1-110	N	04-138	28 IR 1027	*AROC (28 IR 1073)
655 IAC 1-2.1-111	N	04-297	28 IR 2419	
655 IAC 1-2.1-112	N	04-297	28 IR 2423	
655 IAC 1-2.1-113	N	04-297	28 IR 2423	
655 IAC 1-2.1-114	N	04-297	28 IR 2424	
655 IAC 1-2.1-115	N	04-297	28 IR 2425	
655 IAC 1-3-8	R	03-186	27 IR 941	*AROC (27 IR 1652)
655 IAC 1-4-2	A	04-138	28 IR 1028	*AROC (28 IR 1073)

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

675 IAC 13-2.4-3		02-115		*ERR (28 IR 1695)
675 IAC 13-2.4-10	A	04-216	28 IR 1529	
675 IAC 13-2.4-15		02-115		*ERR (28 IR 1695)
675 IAC 13-2.4-19	A	04-216	28 IR 1529	
675 IAC 13-2.4-20	A	04-216	28 IR 1530	
675 IAC 13-2.4-22	A	04-216	28 IR 1530	
675 IAC 13-2.4-24.3	N	04-216	28 IR 1530	
675 IAC 13-2.4-32.5	N	04-216	28 IR 1530	
675 IAC 13-2.4-40.5	N	04-216	28 IR 1531	
675 IAC 13-2.4-40.6	N	04-216	28 IR 1531	
675 IAC 13-2.4-41.5	N	04-216	28 IR 1531	
675 IAC 13-2.4-42.7	N	04-216	28 IR 1531	
675 IAC 13-2.4-43.2	N	04-216	28 IR 1531	
675 IAC 13-2.4-43.6	N	04-216	28 IR 1531	
675 IAC 13-2.4-47	A	04-216	28 IR 1531	
675 IAC 13-2.4-55	A	04-216	28 IR 1533	
675 IAC 13-2.4-55.5	N	04-216	28 IR 1533	
675 IAC 13-2.4-56.5	N	04-216	28 IR 1533	
675 IAC 13-2.4-68		02-115		*ERR (28 IR 1695)
675 IAC 13-2.4-96.5	N	04-216	28 IR 1533	
675 IAC 13-2.4-105.6	N	04-216	28 IR 1533	
675 IAC 13-2.4-107.3	N	04-216	28 IR 1534	
675 IAC 13-2.4-107.5	N	04-216	28 IR 1534	
675 IAC 13-2.4-107.6	N	04-216	28 IR 1534	
675 IAC 13-2.4-118	A	04-216	28 IR 1534	
675 IAC 13-2.4-118.4	N	04-216	28 IR 1534	
675 IAC 13-2.4-121.5	N	04-216	28 IR 1534	
675 IAC 13-2.4-122	A	04-216	28 IR 1534	
675 IAC 13-2.4-122.5	N	04-216	28 IR 1535	
675 IAC 13-2.4-131		02-115		*ERR (28 IR 1695)
675 IAC 13-2.4-132	A	04-216	28 IR 1535	
675 IAC 13-2.4-132.3	N	04-216	28 IR 1535	
675 IAC 13-2.4-132.5	N	04-216	28 IR 1535	
675 IAC 13-2.4-133.5	N	04-216	28 IR 1535	
675 IAC 13-2.4-134.5	N	04-216	28 IR 1535	
675 IAC 13-2.4-143	A	04-216	28 IR 1535	
675 IAC 13-2.4-174		02-115		*ERR (28 IR 1695)
675 IAC 13-2.4-180.5	N	04-216	28 IR 1536	
675 IAC 13-2.4-201.5	N	04-216	28 IR 1536	
675 IAC 13-2.4-201.7	N	04-216	28 IR 1536	
675 IAC 13-2.4-210.3	N	04-216	28 IR 1536	
675 IAC 13-2.4-210.5	N	04-216	28 IR 1536	
675 IAC 13-2.4-213.3	N	04-216	28 IR 1536	
675 IAC 13-2.4-213.5	N	04-216	28 IR 1536	
675 IAC 13-2.4-213.7	N	04-216	28 IR 1536	
675 IAC 13-2.4-214.2	N	04-216	28 IR 1537	
675 IAC 13-2.4-214.4	N	04-216	28 IR 1537	
675 IAC 13-2.4-214.6	N	04-216	28 IR 1537	
675 IAC 13-2.4-214.7	N	04-216	28 IR 1537	
675 IAC 13-2.4-222		02-115		*ERR (28 IR 1695)
675 IAC 13-2.4-228.5	N	04-216	28 IR 1538	
675 IAC 14-4.2	R	04-194	28 IR 312	
675 IAC 14-4.2-3				*ERR (28 IR 970)
675 IAC 14-4.2-19.5				*ERR (28 IR 970)
675 IAC 14-4.2-20.5				*ERR (28 IR 970)
675 IAC 14-4.2-21				*ERR (28 IR 970)
675 IAC 14-4.2-26.5				*ERR (28 IR 970)
675 IAC 14-4.2-29				*ERR (28 IR 970)
675 IAC 14-4.2-30	A	04-8	27 IR 2333	**28 IR 562**
675 IAC 14-4.2-53.7				*ERR (28 IR 970)
675 IAC 14-4.2-69.5				*ERR (28 IR 970)
675 IAC 14-4.2-69.6				*ERR (28 IR 970)
675 IAC 14-4.2-73.5				*ERR (28 IR 970)
675 IAC 14-4.2-81.2				*ERR (28 IR 970)
675 IAC 14-4.2-89.2	A	04-8	27 IR 2333	**28 IR 562**
675 IAC 14-4.2-89.6				*ERR (28 IR 970)
675 IAC 14-4.2-89.8				*ERR (28 IR 970)
675 IAC 14-4.2-107				*ERR (28 IR 970)
675 IAC 14-4.3	N	04-194	28 IR 268	
675 IAC 14-4.3-136.5	N	04-273	28 IR 1850	
675 IAC 14-4.3-155.5	N	04-273	28 IR 1850	
675 IAC 14-4.3-212	A	04-273	28 IR 1850	
675 IAC 14-4.3-213	R	04-273	28 IR 1859	
675 IAC 14-4.3-213.5	N	04-273	28 IR 1850	
675 IAC 14-4.3-214	A	04-273	28 IR 1850	
675 IAC 14-4.3-215	A	04-273	28 IR 1851	
675 IAC 14-4.3-216	R	04-273	28 IR 1859	
675 IAC 14-4.3-219.3	N	04-273	28 IR 1851	
675 IAC 14-4.3-219.5	N	04-273	28 IR 1851	
675 IAC 14-4.3-219.6	N	04-273	28 IR 1851	
675 IAC 14-4.3-219.7	N	04-273	28 IR 1851	
675 IAC 14-4.3-219.8	N	04-273	28 IR 1852	
675 IAC 14-4.3-225.2	N	04-273	28 IR 1852	
675 IAC 14-4.3-226.1	N	04-273	28 IR 1852	
675 IAC 14-4.3-226.5	N	04-273	28 IR 1852	
675 IAC 14-4.3-226.6	N	04-273	28 IR 1852	
675 IAC 14-4.3-227	A	04-273	28 IR 1852	
675 IAC 14-4.3-228.5	N	04-273	28 IR 1852	

675 IAC 14-4.3-230	A	04-273	28 IR 1853	
675 IAC 14-4.3-232	A	04-273	28 IR 1853	
675 IAC 14-4.3-232.5	N	04-273	28 IR 1853	
675 IAC 14-4.3-233	A	04-273	28 IR 1853	
675 IAC 14-4.3-234	A	04-273	28 IR 1854	
675 IAC 14-4.3-238.5	N	04-273	28 IR 1854	
675 IAC 14-4.3-240	A	04-273	28 IR 1854	
675 IAC 14-4.3-240.5	N	04-273	28 IR 1854	
675 IAC 14-4.3-241	A	04-273	28 IR 1854	
675 IAC 14-4.3-243.5	N	04-273	28 IR 1854	
675 IAC 14-4.3-244	R	04-273	28 IR 1859	
675 IAC 14-4.3-246	A	04-273	28 IR 1855	
675 IAC 14-4.3-246.5	N	04-273	28 IR 1855	
675 IAC 14-4.3-247.5	N	04-273	28 IR 1855	
675 IAC 14-4.3-248.5	N	04-273	28 IR 1855	
675 IAC 14-4.3-250	R	04-273	28 IR 1859	
675 IAC 14-4.3-251	R	04-273	28 IR 1859	
675 IAC 14-4.3-252	R	04-273	28 IR 1859	
675 IAC 14-4.3-253.5	N	04-273	28 IR 1855	
675 IAC 14-4.3-253.7	N	04-273	28 IR 1855	
675 IAC 15-1-1	R	04-227	28 IR 1053	
675 IAC 15-1-2	R	04-227	28 IR 1053	
675 IAC 15-1-3	R	04-227	28 IR 1053	
675 IAC 15-1-5	R	04-227	28 IR 1053	
675 IAC 15-1-6	R	04-227	28 IR 1054	
675 IAC 15-1-7	R	04-227	28 IR 1054	
675 IAC 15-1-8.1	R	04-227	28 IR 1054	
675 IAC 15-1-10	R	04-227	28 IR 1054	
675 IAC 15-1-11	R	04-227	28 IR 1054	
675 IAC 15-1-12	R	04-227	28 IR 1054	
675 IAC 15-1-13	R	04-227	28 IR 1054	
675 IAC 15-1-14	R	04-227	28 IR 1054	
675 IAC 15-1-16	R	04-227	28 IR 1054	
675 IAC 15-1-17	R	04-227	28 IR 1054	
675 IAC 15-1-19	R	04-227	28 IR 1054	
675 IAC 15-1-20	R	04-227	28 IR 1054	
675 IAC 15-1-21	R	04-227	28 IR 1054	
675 IAC 15-1-22	R	04-227	28 IR 1054	
675 IAC 15-1.1	N	04-227	28 IR 1037	
675 IAC 15-1.2	N	04-227	28 IR 1039	
675 IAC 15-1.3	N	04-227	28 IR 1046	
675 IAC 15-1.4	N	04-227	28 IR 1048	
675 IAC 15-1.5	N	04-227	28 IR 1049	
675 IAC 15-1.6	N	04-227	28 IR 1051	
675 IAC 15-1.7	N	04-227	28 IR 1052	
675 IAC 17-1.6	R	04-273	28 IR 1859	
675 IAC 17-1.7	N	04-273	28 IR 1855	
675 IAC 18-1.4-3		02-116		*ERR (28 IR 1696)
675 IAC 18-1.4-10.5	N	04-217	28 IR 1309	
675 IAC 18-1.4-11.5	N	04-217	28 IR 1309	
675 IAC 18-1.4-12		02-116		*ERR (28 IR 1696)
675 IAC 18-1.4-27		02-116		*ERR (28 IR 1696)
675 IAC 18-1.4-32.3	N	04-217	28 IR 1309	
675 IAC 18-1.4-32.5	N	04-217	28 IR 1309	
675 IAC 18-1.4-49.5	N	04-217	28 IR 1309	
675 IAC 22-2.2-3	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-4	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-5	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-6	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-7	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-8	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-9	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-10	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-11	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-12	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-13	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-15	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-16	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-17	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-18	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-21	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-22	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-23	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-24	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-25	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-26	N	04-196	28 IR 1029	*CPH (28 IR 1498) *AROC (28 IR 2461)
675 IAC 22-2.2-49.5	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-107.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-134.5	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-183	RA	04-19	27 IR 2340	**28 IR 324**
	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-221.5	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-240.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-241.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-243.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-245.2	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-245.5	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-365.2	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-365.5	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-368.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-369.5	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-378.5	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-412.5	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-437.5	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-437.7	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-443.5	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-511.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-515.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-540	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.3-29.5	N	04-56	27 IR 2860	*CPH (28 IR 982) **28 IR 2369**
675 IAC 22-2.3-35.5	N	04-56	27 IR 2860	*CPH (28 IR 982) **28 IR 2370**
675 IAC 22-2.3-36	A	04-56	27 IR 2860	*CPH (28 IR 982) **28 IR 2370**
675 IAC 22-2.3-36.3	N	04-56	27 IR 2861	*CPH (28 IR 982) **28 IR 2370**
675 IAC 22-2.3-36.4	N	04-56	27 IR 2861	*CPH (28 IR 982) **28 IR 2371**
675 IAC 22-2.3-36.6	N	04-56	27 IR 2863	*CPH (28 IR 982) **28 IR 2372**
675 IAC 22-2.3-36.8	N	04-56	27 IR 2863	*CPH (28 IR 982) **28 IR 2373**
675 IAC 22-2.3-140.5	N	04-56	27 IR 2863	*CPH (28 IR 982) **28 IR 2373**
675 IAC 22-2.3-147.5	N	04-56	27 IR 2863	*CPH (28 IR 982) **28 IR 2373**
675 IAC 22-2.3-147.6	N	04-56	27 IR 2863	*CPH (28 IR 982) **28 IR 2373**
675 IAC 22-2.3-148	A	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**

675 IAC 22-2.3-148.5	N	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.3-237.5	N	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.3-298.5	N	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.3-304.5	N	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 25-1-3		02-118		*ERR (28 IR 1696)
675 IAC 25-1-7.2	N	04-218	28 IR 1310	
675 IAC 25-1-7.4	N	04-218	28 IR 1310	
675 IAC 25-1-7.6	N	04-218	28 IR 1310	
675 IAC 25-1-9.1	N	04-218	28 IR 1310	
675 IAC 25-1-9.3	N	04-218	28 IR 1310	
675 IAC 25-1-9.5	N	04-218	28 IR 1310	
675 IAC 25-1-9.7	N	04-218	28 IR 1310	
675 IAC 25-1-9.9	N	04-218	28 IR 1310	
675 IAC 26	N	04-196	28 IR 1031	*CPH (28 IR 1498) *AROC (28 IR 2461)
675 IAC 27	N	04-275	28 IR 1538	

TITLE 685 REGULATED AMUSEMENT DEVICE SAFETY BOARD

685 IAC 1	RA	04-124	27 IR 3343	**28 IR 1072**

TITLE 760 DEPARTMENT OF INSURANCE

760 IAC 1-21-2	A	04-140	28 IR 1311	**28 IR 2375**
760 IAC 1-21-3	A	04-140	28 IR 1311	**28 IR 2375**
760 IAC 1-21-4	A	04-140	28 IR 1311	**28 IR 2375**
760 IAC 1-21-5	A	04-140	28 IR 1311	**28 IR 2375**
760 IAC 1-21-8	A	04-140	28 IR 1312	**28 IR 2376**
760 IAC 1-21-10	N	04-140	28 IR 1313	**28 IR 2376**
760 IAC 1-21-11	N	04-140	28 IR 1313	**28 IR 2376**
760 IAC 1-50-3	A	04-139	27 IR 4136	**28 IR 1482**
760 IAC 1-50-4	A	04-139	27 IR 4136	**28 IR 1482**
760 IAC 1-50-5	A	04-139	27 IR 4137	**28 IR 1483**
760 IAC 1-60-1	RA	04-143	27 IR 3706	**28 IR 1072**
760 IAC 1-60-2	RA	04-143	27 IR 3706	**28 IR 1072**
760 IAC 1-60-4	RA	04-143	27 IR 3706	**28 IR 1072**
760 IAC 1-70	N	04-39	27 IR 2560 28 IR 314	**28 IR 1480**
760 IAC 1-71	N	05-26	28 IR 2456	
760 IAC 2-1-1	A	03-303	27 IR 3306	**28 IR 563**
760 IAC 2-2-1.5	N	03-303	27 IR 3306	**28 IR 563**
760 IAC 2-2-3.1	N	03-303	27 IR 3307	**28 IR 563**
760 IAC 2-2-3.2	N	03-303	27 IR 3307	**28 IR 563**
760 IAC 2-2-3.3	N	03-303	27 IR 3307	**28 IR 564**
760 IAC 2-2-3.4	N	03-303	27 IR 3307	**28 IR 564**
760 IAC 2-2-3.5	N	03-303	27 IR 3307	**28 IR 564**
760 IAC 2-2-3.6	N	03-303	27 IR 3307	**28 IR 564**
760 IAC 2-2-3.7	N	03-303	27 IR 3307	**28 IR 564**
760 IAC 2-2-3.8	N	03-303	27 IR 3308	**28 IR 565**
760 IAC 2-2-8	A	03-303	27 IR 3308	**28 IR 565**
760 IAC 2-3-1	A	03-303	27 IR 3308	**28 IR 565**
760 IAC 2-3-2	A	03-303	27 IR 3308	**28 IR 565**
760 IAC 2-3-4	A	03-303	27 IR 3309	**28 IR 566**
760 IAC 2-3-6	A	03-303	27 IR 3310	**28 IR 567**
760 IAC 2-3-7	N	03-303	27 IR 3310	**28 IR 567**
760 IAC 2-3-8	N	03-303	27 IR 3311	**28 IR 567**
760 IAC 2-4-1	A	03-303	27 IR 3311	**28 IR 568**
760 IAC 2-4-2	N	03-303	27 IR 3312	**28 IR 569** *ERR (28 IR 609)
760 IAC 2-7-1	A	03-303	27 IR 3313	**28 IR 570**
760 IAC 2-8-1	A	03-303	27 IR 3314	**28 IR 570**
760 IAC 2-8-2	A	03-303	27 IR 3314	**28 IR 571**
760 IAC 2-8-3	A	03-303	27 IR 3314	**28 IR 571**
760 IAC 2-8-4	A	03-303	27 IR 3315	**28 IR 572**
760 IAC 2-8-6	N	03-303	27 IR 3316	**28 IR 572**
760 IAC 2-9-1	A	03-303	27 IR 3316	**28 IR 572**
760 IAC 2-10-1	A	03-303	27 IR 3316	**28 IR 573**
760 IAC 2-13-1	A	03-303	27 IR 3317	**28 IR 573**
760 IAC 2-15-1	A	03-303	27 IR 3317	**28 IR 574** *ERR (28 IR 609)
760 IAC 2-15.5	N	03-303	27 IR 3319	**28 IR 575**
760 IAC 2-16-1	A	03-303	27 IR 3320	**28 IR 576**
760 IAC 2-16.1	N	03-303	27 IR 3320	**28 IR 576**
760 IAC 2-17-1	A	03-303	27 IR 3323	**28 IR 580**
760 IAC 2-18-1	A	03-303	27 IR 3325	**28 IR 582**
760 IAC 2-19-2	A	03-303	27 IR 3325	**28 IR 582**
760 IAC 2-19.5	N	03-303	27 IR 3325	**28 IR 582**
760 IAC 2-20-10	A	03-303	27 IR 3329	**28 IR 585**
760 IAC 2-20-31.1	A	03-303	27 IR 3329	**28 IR 586**
760 IAC 2-20-34	A	03-303	27 IR 3329	**28 IR 586**
760 IAC 2-20-35	A	03-303	27 IR 3332	**28 IR 589**
760 IAC 2-20-36.1	A	03-303	27 IR 3332	**28 IR 589**
760 IAC 2-20-36.2	A	03-303	27 IR 3333	**28 IR 590**
760 IAC 2-20-37.2	A	03-303	27 IR 3334	**28 IR 590**
760 IAC 2-20-37.3	N	03-303	27 IR 3334	**28 IR 590**
760 IAC 2-20-38.1	A	03-303	27 IR 3334	**28 IR 590**
760 IAC 2-20-42	A	03-303	27 IR 3335	**28 IR 591**
760 IAC 3-1-1	A	05-5	28 IR 2426	
760 IAC 3-2-2.5	A	05-5	28 IR 2426	
760 IAC 3-2-6.1	A	05-5	28 IR 2426	
760 IAC 3-2-6.2	A	05-5	28 IR 2426	
760 IAC 3-2-7	A	05-5	28 IR 2426	
760 IAC 3-4-1	A	05-5	28 IR 2427	
760 IAC 3-5-1	A	05-5	28 IR 2427	
760 IAC 3-6-1	A	05-5	28 IR 2428	
760 IAC 3-7-1	A	05-5	28 IR 2432	
760 IAC 3-8-1	A	05-5	28 IR 2434	
760 IAC 3-9-1	A	05-5	28 IR 2437	
760 IAC 3-9-2	A	05-5	28 IR 2437	
760 IAC 3-11-1	A	05-5	28 IR 2439	
760 IAC 3-12-1	A	05-5	28 IR 2444	
760 IAC 3-14-1	A	05-5	28 IR 2445	
760 IAC 3-15-1	A	05-5	28 IR 2453	
760 IAC 3-18-1	A	05-5	28 IR 2455	

TITLE 804 BOARD OF REGISTRATION FOR ARCHITECTS AND LANDSCAPE ARCHITECTS

804 IAC 1.1-1-1	A	04-156	28 IR 1054	**28 IR 2377**
804 IAC 1.1-8	N	04-156	28 IR 1055	**28 IR 2378**

TITLE 808 STATE BOXING COMMISSION

808 IAC 1-3-6	A	03-226	27 IR 2563	**28 IR 198**
808 IAC 1-5-1	A	03-226	27 IR 2563	**28 IR 198**
808 IAC 1-5-2	A	03-226	27 IR 2563	**28 IR 198**
808 IAC 2-1-5	A	03-226	27 IR 2564	**28 IR 198**
808 IAC 2-1-12	A	03-226	27 IR 2564	**28 IR 199**
808 IAC 2-7-14	A	03-226	27 IR 2564	**28 IR 199**
808 IAC 2-8-7	R	03-226	27 IR 2566	**28 IR 200**
808 IAC 2-9-5	A	03-226	27 IR 2564	**28 IR 199**
808 IAC 2-12-0.5	N	03-227	27 IR 2566	*ARR (28 IR 215) **28 IR 201**
808 IAC 2-12-2	N	03-227	27 IR 2567	*ARR (28 IR 215) **28 IR 201**
808 IAC 2-12-3	N	03-227	27 IR 2567	*ARR (28 IR 215) **28 IR 201**
808 IAC 2-12-4	N	03-227	27 IR 2567	*ARR (28 IR 215) **28 IR 202**
808 IAC 2-12-5	N	03-227	27 IR 2567	*ARR (28 IR 215) **28 IR 202**
808 IAC 2-12-6	N	03-227	27 IR 2567	*ARR (28 IR 215) **28 IR 202**
808 IAC 2-12-7	N	03-227	27 IR 2568	*ARR (28 IR 215) **28 IR 202**
808 IAC 2-12-8	N	03-227	27 IR 2568	*ARR (28 IR 215)
808 IAC 2-18-1	A	03-226	27 IR 2565	**28 IR 199**
808 IAC 2-22-1	A	03-226	27 IR 2565	**28 IR 199**

TITLE 820 STATE BOARD OF COSMETOLOGY EXAMINERS

820 IAC 4-3-1	A	04-254	28 IR 1059	**28 IR 2382**

TITLE 828 STATE BOARD OF DENTISTRY

828 IAC 0.5-2-3	A	04-233	28 IR 670	*AROC (28 IR 1073)
828 IAC 1-5-6	N	04-189	28 IR 669	**28 IR 2383**
828 IAC 5	N	04-233	28 IR 671	*AROC (28 IR 1073)

TITLE 830 INDIANA DIETITIANS CERTIFICATION BOARD

830 IAC 1-1	RA	04-6	27 IR 2340	**28 IR 325**

TITLE 840 INDIANA STATE BOARD OF HEALTH FACILITY ADMINISTRATORS

840 IAC 2-1	RA	05-12	28 IR 2459	

TITLE 844 MEDICAL LICENSING BOARD OF INDIANA

844 IAC 6-1-2	A	03-262	27 IR 1284	**28 IR 209**
844 IAC 6-1-4	A	03-261	27 IR 1635	*CPH (27 IR 2300) **28 IR 203**
844 IAC 6-3-1	A	03-261	27 IR 1636	*CPH (27 IR 2300) **28 IR 203**
844 IAC 6-3-2	A	03-261	27 IR 1636	*CPH (27 IR 2300) **28 IR 204**
844 IAC 6-3-4	A	03-261	27 IR 1637	*CPH (27 IR 2300) **28 IR 204**
844 IAC 6-3-5	A	03-261	27 IR 1637	*CPH (27 IR 2300) **28 IR 205**
844 IAC 6-3-6	N	03-261	27 IR 1638	*CPH (27 IR 2300) **28 IR 205**
844 IAC 6-4-3	A	03-261	27 IR 1638	*CPH (27 IR 2300) **28 IR 206**
844 IAC 6-6-1	R	03-261	27 IR 1642	*CPH (27 IR 2300) **28 IR 209**
844 IAC 6-6-2	R	03-261	27 IR 1642	*CPH (27 IR 2300) **28 IR 209**
844 IAC 6-6-3	A	03-261	27 IR 1638	*CPH (27 IR 2300) **28 IR 206**
844 IAC 6-6-4	A	03-261	27 IR 1639	*CPH (27 IR 2300) **28 IR 206**
844 IAC 6-7-2	A	03-261	27 IR 1639	*CPH (27 IR 2300) **28 IR 207**
844 IAC 10-4-1	A	03-329	27 IR 2568	**28 IR 211**
844 IAC 12-5-4	A	04-17	28 IR 316	**28 IR 1693**

TITLE 845 BOARD OF PODIATRIC MEDICINE

845 IAC 1-5-3	A	04-134	28 IR 317	

TITLE 848 INDIANA STATE BOARD OF NURSING

848 IAC 1-1-6	A	04-97	28 IR 674	**28 IR 2383**
848 IAC 1-1-7	A	04-97	28 IR 675	**28 IR 2384**
848 IAC 1-1-2.1	A	04-65	27 IR 2865	**28 IR 593**
848 IAC 1-2-1	A	04-65	27 IR 2866	**28 IR 594**
848 IAC 1-2-5	A	04-65	27 IR 2866	**28 IR 594**
848 IAC 1-2-6	A	04-65	27 IR 2867	**28 IR 595**
848 IAC 1-2-7	A	04-65	27 IR 2868	**28 IR 596**
848 IAC 1-2-8	A	04-65	27 IR 2868	**28 IR 596**
848 IAC 1-2-8.5	N	04-65	27 IR 2868	**28 IR 596**
848 IAC 1-2-9	A	04-65	27 IR 2869	**28 IR 597**
848 IAC 1-2-10	A	04-65	27 IR 2869	**28 IR 597**
848 IAC 1-2-12	A	04-65	27 IR 2870	**28 IR 598**
848 IAC 1-2-13	A	04-65	27 IR 2870	**28 IR 598**
848 IAC 1-2-14	A	04-65	27 IR 2870	**28 IR 599**
848 IAC 1-2-16	A	04-65	27 IR 2871	**28 IR 599**
848 IAC 1-2-17	A	04-65	27 IR 2872	**28 IR 600**
848 IAC 1-2-18	A	04-65	27 IR 2872	**28 IR 600**
848 IAC 1-2-19	A	04-65	27 IR 2873	**28 IR 601**
848 IAC 1-2-20	A	04-65	27 IR 2873	**28 IR 601**
848 IAC 1-2-21	A	04-65	27 IR 2873	**28 IR 602**
848 IAC 1-2-22	A	04-65	27 IR 2874	**28 IR 602**
848 IAC 1-2-23	A	04-65	27 IR 2874	**28 IR 602**
848 IAC 1-2-24	A	04-65	27 IR 2874	**28 IR 603**
848 IAC 6	R	04-97	28 IR 675	**28 IR 2385**

TITLE 856 INDIANA BOARD OF PHARMACY

856 IAC 1-30-2	A	04-173	28 IR 317	**28 IR 2385**
856 IAC 1-30-3	A	04-173	28 IR 318	**28 IR 2385**
856 IAC 1-30-4.1	N	04-173	28 IR 318	**28 IR 2385**
856 IAC 1-30-4.2	N	04-173	28 IR 318	**28 IR 2386**
856 IAC 1-30-4.3	N	04-173	28 IR 318	**28 IR 2386**
856 IAC 1-30-4.4	N	04-173	28 IR 318	**28 IR 2386**
856 IAC 1-30-4.5	N	04-173	28 IR 318	**28 IR 2386**
856 IAC 1-30-4.6	N	04-173	28 IR 318	**28 IR 2386**
856 IAC 1-30-6	A	04-173	28 IR 319	**28 IR 2386**
856 IAC 1-30-7	A	04-173	28 IR 319	**28 IR 2386**
856 IAC 1-30-8	A	04-173	28 IR 319	**28 IR 2387**
856 IAC 1-30-9	A	04-173	28 IR 320	**28 IR 2388**
856 IAC 1-30-14	A	04-173	28 IR 320	**28 IR 2388**
856 IAC 1-30-17	A	04-173	28 IR 321	**28 IR 2389**
856 IAC 1-30-18	A	04-173	28 IR 321	**28 IR 2389**
856 IAC 1-33-1	A	03-326	27 IR 2073	**27 IR 3073**

TITLE 864 STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

864 IAC 1.1-2-4	A	03-301	27 IR 2569	**28 IR 603**
864 IAC 1.1-4.1-9	A	03-301		††**28 IR 603**
864 IAC 1.1-12-1	A	03-301	27 IR 2569	**28 IR 604**
864 IAC 1.1-12-2	N	03-301	27 IR 2570	**28 IR 604**

TITLE 865 STATE BOARD OF REGISTRATION FOR LAND SURVEYORS

865 IAC 1-11-1	A	03-300	27 IR 2570	**28 IR 605**
	A	04-175	28 IR 1059	**28 IR 2390**

TITLE 872 INDIANA BOARD OF ACCOUNTANCY

872 IAC 1-1-6.1	A	04-41	27 IR 2574	**28 IR 212**
	A	04-171	27 IR 4138	**28 IR 1182**
872 IAC 1-3-3.3	A	04-98	27 IR 3336	**28 IR 605**
872 IAC 1-3-16	A	04-5	27 IR 2335	**28 IR 211**
872 IAC 1-6	N	03-270	27 IR 2571	*AROC (27 IR 4141) **28 IR 966**

TITLE 876 INDIANA REAL ESTATE COMMISSION

876 IAC 2-18	N	03-256	27 IR 2575	**28 IR 213**
876 IAC 3-2-7	A	03-255	27 IR 2574	**28 IR 212**
876 IAC 3-6-2	A	04-225	28 IR 1547	
876 IAC 3-6-3	A	04-225	28 IR 1548	

TITLE 878 HOME INSPECTORS LICENSING BOARD

878 IAC	N	04-191	28 IR 1060	*CPH (28 IR 1197) *AROC (28 IR 1560)

TITLE 879 MANUFACTURED HOME INSTALLER LICENSING BOARD

879 IAC	N	04-272	28 IR 1549	

TITLE 888 INDIANA BOARD OF VETERINARY MEDICAL EXAMINERS

888 IAC 1.1-6-1	A	04-74	27 IR 2875	**28 IR 606**
	A	04-137	27 IR 3704	**28 IR 607**
888 IAC 1.1-8-3	A	04-295	28 IR 1859	

TITLE 898 INDIANA ATHLETIC TRAINERS BOARD

898 IAC 1-1-2.4	RA	05-13	28 IR 2460	
898 IAC 1-1-4.5	RA	05-13	28 IR 2460	
898 IAC 1-1-10	RA	05-13	28 IR 2460	

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

905 IAC 1-5.2-9.2	A	04-111	27 IR 3337	*AROC (28 IR 1561)
905 IAC 1-15.2-3	A	04-110	27 IR 3337	*AWR (28 IR 1486)
905 IAC 1-26-3	N	04-112	27 IR 3338	*AROC (28 IR 1562)

905 IAC 1-43	RA	04-14	27 IR 2579	*CPH (27 IR 3096)
				28 IR 1316
905 IAC 1-44	RA	04-109	27 IR 3343	**28 IR 1316**
905 IAC 1-45-2	A	03-319	27 IR 2576	*CPH (27 IR 3096)
				*AROC (28 IR 1317)
				28 IR 1484
905 IAC 1-45-3	A	03-319	27 IR 2576	*CPH (27 IR 3096)
				*AROC (28 IR 1317)
				28 IR 1484
905 IAC 1-46	N	03-279	27 IR 1291	*ARR (27 IR 4024)
				*AROC (27 IR 4141)
				28 IR 969
905 IAC 1-48	N	04-115	27 IR 3339	*AROC (28 IR 1562)

NONCODE RULES

Family and Social Services, Office of the Secretary of			
	A	04-246	*ETR (28 IR 230)
Lottery Commission, State			
	N	04-238	*ETR (28 IR 217)
	N	04-239	*ETR (28 IR 218)
	N	04-240	*ETR (28 IR 219)
	N	04-242	*ETR (28 IR 223)
	N	04-243	*ETR (28 IR 224)
	N	04-244	*ETR (28 IR 226)
	R	04-249	*ETR (28 IR 227)
	N	04-250	*ETR (28 IR 227)
	N	04-251	*ETR (28 IR 228)
	N	04-265	*ETR (28 IR 613)
	N	04-266	*ETR (28 IR 614)
	N	04-280	*ETR (28 IR 972)
	N	04-281	*ETR (28 IR 973)
	N	04-282	*ETR (28 IR 974)
	N	04-301	*ETR (28 IR 1186)
	N	04-302	*ETR (28 IR 1187)
	N	04-303	*ETR (28 IR 1188)
	N	04-304	*ETR (28 IR 1189)
	N	04-305	*ETR (28 IR 1191)
	N	04-306	*ETR (28 IR 1192)
	N	04-326	*ETR (28 IR 1488)
	N	04-327	*ETR (28 IR 1489)
	N	04-328	*ETR (28 IR 1491)
	N	04-331	*ETR (28 IR 1495)
	N	04-332	*ETR (28 IR 1496)
	N	05-6	*ETR (28 IR 1698)
	N	05-7	*ETR (28 IR 1701)
	N	05-8	*ETR (28 IR 1702)
	N	05-9	*ETR (28 IR 1704)
	N	05-10	*ETR (28 IR 1704)
	N	05-16	*ETR (28 IR 1708)
	N	05-17	*ETR (28 IR 1709)
	N	05-29	*ETR (28 IR 2143)
	N	05-30	*ETR (28 IR 2144)
	N	05-31	*ETR (28 IR 2145)
	N	05-33	*ETR (28 IR 2150)
	N	05-34	*ETR (28 IR 2152)
	N	05-61	*ETR (28 IR 2395)
	N	05-62	*ETR (28 IR 2397)
	N	05-63	*ETR (28 IR 2398)
	N	05-64	*ETR (28 IR 2399)
	N	05-65	*ETR (28 IR 2401)
Natural Resources Commission			
	N	04-205	*ERR (28 IR 214)
	R	04-245	*ETR (28 IR 230)
			*ERR (28 IR 214)
	R	04-247	*ETR (28 IR 230)
	R	04-257	*ETR (28 IR 615)
	N	04-258	*ETR (28 IR 615)
	N	04-259	*ETR (28 IR 615)
	N	04-260	*ETR (28 IR 616)
	N	04-262	*ETR (28 IR 616)
	N	04-264	*ETR (28 IR 616)
	N	04-285	*ETR (28 IR 981)
	N	04-307	*ETR (28 IR 1192)
	N	04-308	*ETR (28 IR 1194)
	N	04-314	*ETR (28 IR 1194)
	N	04-315	*ETR (28 IR 1195)
	N	05-44	*ETR (28 IR 2402)
	N	05-52	*ETR (28 IR 2402)
	N	05-53	*ETR (28 IR 2403)
	N	05-56	*ETR (28 IR 2403)
	N	05-59	*ETR (28 IR 2405)
Tax Review, Indiana Board of			
	N	04-261	*ETR (28 IR 612)
	N	04-330	*ETR (28 IR 1487)
	N	05-54	*ETR (28 IR 2394)

*Key:

A:	Amended Text
AGA:	Attorney General's Action
AROC:	Administrative Rules Oversight Committee Notice
ARR:	Agency Recalls Rule
AWR:	Agency Withdrew Rule
CPH:	Change in Public Hearing
DAG:	Disapproved by Attorney General
DG:	Disapproved by Governor
ER:	Emergency Rule
ERR:	Errata
ETR:	Emergency Temporary Rule
ETS:	Emergency Temporary Standard
GRAT:	Governor Requires Additional Time
N:	New Text
NRA:	Notice of Rule Adoption
OAC:	Objection to Errata
ON:	Other Notices of Administrative Action
R:	Repealed Text
RA:	Readopted Rule
SAC:	Solicitation of Advance Comment
SPE:	Statutory Period for Promulgation Expired
SPE-SE:	Statutory Period for Promulgation Expired; Signed After Expiration
††:	Renumbered or Added in Final Rule

Index

CITATIONS TO FINAL RULES ARE IN **BOLD** TYPE

*The index is cumulative for all proposed and final rulemaking actions published after September 1, 2004. Final rules published before that date have been incorporated into the 2005 edition of the Indiana Administrative Code. Indiana Register citations in roman type are to the volume and page on which the proposed version of the rule appears. Entries in **bold** type indicate the page on which a final rule filed with the Secretary of State appears.

CITATIONS TO FINAL RULES ARE IN **BOLD** TYPE

CITATIONS TO FINAL RULES ARE IN **BOLD** TYPE

CITATIONS TO FINAL RULES ARE IN **BOLD** TYPE

CITATIONS TO FINAL RULES ARE IN **BOLD** TYPE

CITATIONS TO FINAL RULES ARE IN **BOLD** TYPE

CITATIONS TO FINAL RULES ARE IN **BOLD** TYPE

CITATIONS TO FINAL RULES ARE IN **BOLD** TYPE

CITATIONS TO FINAL RULES ARE IN **BOLD** TYPE

CITATIONS TO FINAL RULES ARE IN **BOLD** TYPE

CITATIONS TO FINAL RULES ARE IN **BOLD** TYPE

CITATIONS TO FINAL RULES ARE IN **BOLD** TYPE

CITATIONS TO FINAL RULES ARE IN **BOLD** TYPE

CITATIONS TO FINAL RULES ARE IN **BOLD** TYPE

CITATIONS TO FINAL RULES ARE IN **BOLD** TYPE

CITATIONS TO FINAL RULES ARE IN **BOLD** TYPE

CITATIONS TO FINAL RULES ARE IN **BOLD** TYPE

CITATIONS TO FINAL RULES ARE IN **BOLD** TYPE

CITATIONS TO FINAL RULES ARE IN **BOLD** TYPE

CITATIONS TO FINAL RULES ARE IN **BOLD** TYPE

CITATIONS TO FINAL RULES ARE IN **BOLD** TYPE

Indiana Register

The **Indiana Register** is an official source of the text of proposed and final rules and notices of rulemaking activity. For keeping up to date on rules and participating in the rulemaking process, the **Indiana Register** is a necessary tool. If you would like further information, call the Legislative Services Agency at (317) 232-9557.

ORDER FORM

☐ Change of address.

☐ Enclosed is my check for $60 as payment in advance for the **CD-ROM version of the Indiana Register** (October 2004 through September 2005, **Volume 28**).

☐ Enclosed is my check for $25.60 ($25 plus $0.60 postage) as payment in advance for the **2005 edition of the CD-ROM version of the Indiana Administrative Code.**

_____
name or firm

_____
address

_____
city *state* *zip code*

(_____) _____
telephone

Please make checks payable to:
Legislative Services Agency

Mail to:

LEGISLATIVE SERVICES AGENCY
ATTN: LIC
200 West Washington Street, Suite 302
Indianapolis, IN 46204-2789

Indiana Register subscriptions $60
Indiana Administrative Code orders are being accepted.

The **Indiana Administrative Code** and the **Indiana Register** are available on the Internet at:
http:/www.in.gov/legislative/ic_iac

Indiana Register

Indiana Register
Legislative Services Agency
200 West Washington Street, Suite 302
Indianapolis, IN 46204-2789