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I. Introduction

The tax assessment procedures in Indiana are outlined by statutes, the IDSR’s policies and case law. Further, many aspects of the Indiana tax assessment procedure track the federal tax assessment procedure. Some aspects of this procedure have no supporting case law, however, simply because taxpayers have not challenged their assessments. As a general rule, courts will liberally construe tax statutes relating to assessment in favor of the IDSR. Courts have held that liberal construction secures uniform implementation of assessment statutes. See Economy Oil Corp. v. IDSR, 321 N.E.2d 215 (Ind. App. 1979) and Matter of the Estate of Souder, 421 N.E.2d 13 (Ind. App. 1981). Assessments by the IDSR are prima facie evidence that the department’s claim for the unpaid tax is valid. And the burden lies with the taxpayer to establish there has been an incorrect assessment. See I.C. 6-8.1-5-1(b). Additionally, the principles of taxation are presumed to apply equally to all taxpayers throughout the state. See State Board of Tax Commissioners v. Traylor, 228 N.E.2d 26 (Ind. App. 1967). Although the aforementioned cases deal with property taxes and not the listed taxes, the principles for which they are cited prevail in all areas of taxation.

II. General Powers and Duties of the IDSR

The Indiana Department of State Revenue (“IDSR”) is responsible for assessing and collecting virtually all of the state taxes for Indiana. To accomplish this task, the IDSR is given broad regulatory authority in administering and collection the state taxes under its control and is divided into numerous divisions to enable it to perform its duties more efficiently.

This chapter categories each department and division into one of three major areas: major tax, Audit, or administrative. This chapter discusses the statutory basis for the IDSR and the overall structure of the Department and each major section of the Department as well as the component divisions of each section. The conclusion then summarizes the interaction within the IDSR and the relation of the IDSR to other state agencies.

The administrative power of the IDSR is derived from three Indiana statutes. One statute establishes the IDSR as an agency of the state to administer, collect, and enforce the taxes placed under its authority. See I.C. 6-8.1-2-1.

A second statute ensures that the IDSR is controlled by the governor. See I.C. 6-8.1-2-2. A third statute deals with the responsibility of the IDSR. See I.C. 6-8.1-3-1. One of the sources that names the taxes under the IDSR’s authority is the roster of so-called “listed taxes” which are set out in I.C. 6-8.1-1-1 and include the following taxes:

2. Riverboat admissions tax. See I.C. 4-33-12.
5. State gross retail and use taxes. See I.C. 6-2.5.
7. Supplemental net income tax. See I.C. 6-3-8.
8. County adjusted gross income tax. See I.C. 6-3-5-1.1.
9. County option income tax. See I.C. 6-3-5-6.
10. County economic development income tax. See I.C. 6-3-5-7.
15. Financial institutions tax. See I.C. 6-5.5.
17. Alternative fuel permit fee. See I.C. 6-6-2.1.
18. Special fuel tax. See I.C. 6-6-2.5.

The IDSR’s responsibility is to investigate, assess, collect, and enforce the tax only where there is a delinquency or evasion; administration and collection of this tax remains with other agencies named...
22. Commercial vehicle excise tax. See I.C. 6-6-5. Where these taxes are payable to the Bureau of Motor Vehicles ("BMV") and are not subject to apportionment under the International Registration Plan, the IDSR’s responsibility is to investigate, assess, collect, and enforce only where there is a delinquency or evasion; administration and collection of the tax remains with the BMV. See I.C. 6-8.1-3-1.


24. Cigarette tax. See I.C. 6-7-1.


30. Petroleum severance tax. See I.C. 6-8-1.


34. Oil inspection fee. See I.C. 16-44-2.

35. Emergency and hazardous chemical inventory form fee. See I.C. 6-6-10.


Also, besides the specifically listed taxes above, the IDSR is authorized to administer, collect, and enforce any other tax, when required by law. See I.C. 6-8.1-1-1 and I.C. 6-8.1-2-1. Death taxes are an example of these. See I.C. 6-4.1. However, the IDSR’s primary responsibility is to administer, collect, and enforce the listed taxes. See I.C. 6-8.1-3-1(a). The only taxes not administered by the IDSR are personal and real property taxes which are administered by the Indiana State Board of Tax Commissioners ("ISBTC"). Neither the ISBTC nor the IDSR are subject to the Administrative Orders and Procedures Act for appeals of tax controversies taken within their respective departments. See I.C. 4-21-5-2-4.

In order to perform the required functions, the IDSR Commissioner is given the statutory power to establish various departments and divisions within the IDSR. See I.C. 6-8.1-4-1. The structure of the IDSR is subject to change, at the Commissioner's directive. The IDSR Commissioner is required, however, to establish and maintain the audit division. This division conducts studies of the IDSR's operations, and recommends whatever changes seem advisable, audits a statistical sampling of the returns filed for the listed taxes, reviews such federal tax returns and other data as may be helpful in performing the audit function, and furnishes the Commissioner, at the Commissioner's request, information showing the treatment that the Indiana tax statutes are given by the taxpayers and by the taxing officials. See I.C. 6-8.1-4-1.

The physical location of the IDSR is in the Indiana Government Center in Downtown Indianapolis where it occupies nearly two entire floors. In addition to its main office, the IDSR’s Motor Carrier Services Division is located in the Ameriplex Industrial Park, just south of Indianapolis. This complies with the state’s obligation, under statute, to provide adequate office space. See I.C. 6-8.1-3-9. The IDSR may rent, lease, or otherwise acquire additional office space at locations outside Marion County, if it feels that efficiency or economy is best served by locating branch offices at those locations. However, an agreement securing office space for a branch office may not extend for a period of more than ten years. See I.C. 6-8.1-3-9. In addition to the office space mentioned above, the IDSR has district offices located in the following cities: Bloomington, Clarksville, Columbus, Evansville, Fort Wayne, Kokomo, Lafayette, Merrillville, Michigan City, Muncie, South Bend, and Terre Haute.

The Commissioner, with the governor’s approval, may employ individuals to perform the various functions of the IDSR. See I.C. 6-8.1-3-2. These employees may not perform any activity outside the IDSR, involving the representation of another for compensation, if such activity would conflict with their departmental jobs. This includes preparation of state or federal tax returns and accounting or legal services if these services are used in preparation of a state or federal tax return. See I.C. 6-8.1-3-2. Note that employees are only prohibited from providing these services when they are being paid in return for these services or when rendering these services would create a conflict of interest. Also, for two years after the date of termination, a former employee of the IDSR may not act in any
capacity for a person (other than the IDSR, another state agency, or the federal government) when that person’s case arose during the former employee’s employment. See I.C. 6-8.1-3-2; 45 IAC 15-3-1.5. The IDSR may not include the amount of revenue collected or tax liability assessed in the evaluation of an employee and may not set quotas for employees based on the number of cases closed. See I.C. 6-8.1-3-2.5.

The IDSR is empowered to issue rules and regulations governing the administration of the listed taxes. These regulations may interpret statutes or set out procedures for taxpayers to follow. See I.C. 6-8.1-3-3; 45 IAC 15-3-2. However, a change in the interpretation of a listed tax will not take effect before the date the change is adopted as a rule or published in the Indiana Register. See I.C. 6-8.1-3-3(b). In general, modifications or revocation of rules will not be applied retroactively. See 45 IAC 15-3-2.

The IDSR has the sole authority to furnish forms used in the administration and collection of the listed taxes. See I.C. 6-8.1-3-4. The IDSR will accept reprints and reproductions if they are substantially the same weight, size, texture, and of a quality as good as that used on the original form. However, the Department reserves the right to reject any reproductions with poor legibility. See 45 IAC 15-3-3. The IDSR is also authorized to enter into agreements with other states for the exchange of information relevant to the administration and enforcement of the listed taxes. However, the IDSR may not divulge any information that is obtained from federal returns or schedules to officials of other state governments. See I.C. 6-8.1-3-7. When the IDSR is required to mail a document by statute, it may use (1) first class mail; (2) registered mail, return receipt requested; (3) certified mail, or (4) certificate of mailing. See I.C. 6-8.1-3-11. The choice of method of mailing is at the IDSR’s discretion. However, where mailing is not required by statute, the IDSR can use any form of mailing that it chooses. See I.C. 6-8.1-3-11. In addition, the IDSR may contract with persons outside of the IDSR to assist it in carrying out its duties under law. The contract must bind the person to comply with requirements of the IDSR regarding the collection and administration of taxes. See I.C. 6-8.1-3-10.

The Indiana Code provides that the IDSR may prescribe qualifications a person must have in order to represent a taxpayer before the IDSR. There are no formal qualifications for individuals to represent a taxpayer before the IDSR. See 45 IAC 15-3-4. However, in order to act as a representative, either (1) the taxpayer must be present at all times, or (2) the representative must have a properly executed power of attorney. See I.C. 6-8.1-3-8. The IDSR has developed a Power of Attorney form which identifies the taxpayer(s) and the attorney(s)-in-fact. The Power of Attorney Form requires the taxpayer's signature and must be notarized. The IDSR also accepts the federal form, which is considerably more detailed than the IDSR's form. Additionally, IDSR will accept individually drafted documents appointing a representative so long as the documents are properly executed and filed with the IDSR. Once a taxpayer executes a power of attorney, the IDSR will primarily communicate with the taxpayer’s representative and generally, a copy of these communications will not be sent to the taxpayer until a final decision is reached by the IDSR. See 45 IAC 15-3-4.

The IDSR has the power to audit any returns and investigate any matters with respect to the listed taxes. To assist in its powers of auditing and investigating, the IDSR has the power to subpoena a witness, to subpoena the production of evidence, and question witnesses under oath. The IDSR may serve subpoenas on its own or it may order the sheriff of the county where the person to be subpoenaed resides to do so. See I.C. 6-8.1-3-12; 45 IAC 15-3-5. However, subpoenas are not often needed to obtain evidence from the taxpayer because audited taxpayers generally cooperate with the IDSR. The subpoena powers are most often used as a precautionary measure when the IDSR is seeking to obtain information regarding the taxpayer's finances from another entity (e.g., a bank). If a taxpayer does not comply with the subpoena, then the IDSR may petition a court in the taxpayer's county for enforcement of the subpoena. The court must schedule a hearing within ten days, and if the taxpayer cannot show good cause for not complying, then the court will order the taxpayer to comply. If the taxpayer fails to obey the court order, then the taxpayer may be cited for contempt. See I.C. 6-8.1-3-12.

In general, when a subpoena to produce forms and records relating to the taxpayer’s tax liability is issued, the taxpayer cannot resist enforcement of the subpoena based upon the Fifth Amendment protection against self-incrimination. Green v. State ex rel. Dep’t of State Revenue, 390 N.E.2d 1087, 1090 (Ind. Ct. App. 1979). An exception to the general rule is made where the proceeding becomes criminal in nature, rather than civil. Id. The Green court adopted the test of good faith outlined in U.S. v. Powell, 379 U.S. 48, 57-58 (1964). The elements of the good faith test in Powell are (1) that the investigation be “conducted pursuant to a legitimate purpose,” (2) that the query be pertinent to that purpose, (3) that the Commissioner not already have the information being sought, and (4) that the administrative procedures required by law be followed. To determine whether a subpoena has been issued in good faith, the court will look at the position of the IDSR as a whole, not at the motivation of an individual agent. Green, 390 N.E.2d at 1090. Looking at the IDSR rather than at the individual agent put a heavy burden of proof on
a taxpayer who is trying to resist a subpoena to show lack of good faith on the part of the IDSR. Id., n.4. In addition, the court ruled that the contempt order issued by the trial court in Green was coercive, not punitive, and the contempt order was conditioned on the taxpayer’s compliance. Id. at 1092.

The IDSR may act as a representative of the State of Indiana to enter into reciprocal agreements on the imposition of motor fuel taxes with other states, territories of the United States, or states or provinces of a foreign country. To further this function, the IDSR is empowered to be a member of the Base State Fuel Tax Agreement or any other agreement developed by the National Governor’s Association. The IDSR may adopt rules to carry out the provisions of this agreement and if the provisions of this agreement are different than any statute of Indiana, then the agreement will take precedence. See I.C. 6-8.1-3-14. The IDSR is given complete authority to impose motor fuel taxes on an allocation or apportionment basis without reference to or application of any other statutes of the state of Indiana. See I.C. 6-8.1-3-14.

To help in the enforcement of collection of taxes, The IDSR is to prepare each month a list of all outstanding tax warrants within the last ten years and certify a copy of this list to the BMV, who in turn must cross reference this list before issuing a title on a motor vehicle. If the person’s name does appear on this list, then the BMV will enter a tax lien on the title. See I.C. 6-8.1-3-16.

Under the tax administration article (6-8.1 et seq.), the IDSR is also empowered to compile statistical studies from information derived from state tax returns and it may disclose the results of these studies. Also, the IDSR may disclose statistical information from state tax returns to the legislative or executive branches of state government or any other state agency for the purpose of allowing these other governmental entities to conduct their own statistical studies. However, the IDSR may not disclose this information if as a result the identity of a taxpayer would be disclosed, the identity of a taxpayer could be reasonably associated with any of the information which was derived for use in the study, or the IDSR’s ability to obtain information from federal tax returns would, in the IDSR’s judgment, be jeopardized in any manner. See I.C. 6-8.1-7-2. The IDSR may release, at a person’s request, information stating that an individual had or had not filed an Indiana income tax return. However, such information could not be disclosed until the close of the calendar year following the year in which the return should have been filed. To clarify, if a taxpayer filed a 2001 Indiana individual income tax return, information regarding whether or not a return had been filed in that year could not be released until January 2004. See I.C. 6-8.1-7-2; 45 IAC 15-7-2. A person that violates any of the preceding confidentiality provisions commits a Class “C” misdemeanor and if such person is an officer or employee of the State of Indiana, that person will be immediately dismissed from such office or position of employment. See I.C. 6-8.1-7-3.

III. The Filing Of The Tax Return

By statute, the listed taxes have associated with them "due dates," which are the last dates on which specified acts may be performed and still be considered on time. See I.C. 6-8.1-1-4. If a due date falls on a Saturday, Sunday, or legal holiday, the prescribed act may be performed on the following day (not a Saturday, Sunday, or legal holiday) and still be considered timely. See I.C. 6-8.1-6-2.

Where the statute for a listed tax prescribes a date by which a document must be filed, if the document is not mailed, it is considered filed on the day the Indiana Department of State Revenue physically receives it. See I.C. 6-8.1-6-3(a)(2). Any document sent by U.S. mail to the Department is considered filed with the Department on the date of the postmark. See I.C. 6-8.1-6-3(a)(1). If the document is received after its due date and the postmark is illegible, the document will be considered filed on time if the taxpayer can show by reasonable evidence that the document was deposited in the mail before the document was due. See I.C. 6-8.1-6-3(c).

A tax return or other document never received by the Indiana Department of State Revenue is considered timely filed if the taxpayer can show by reasonable evidence that the document was deposited in the mail before the due date and if the taxpayer files a duplicate document with the Indiana department of State revenue within 30 days after the date the Department sends notice that the document was not received. See I.C. 6-8.1-6-3(d).

A taxpayer who is unable to file a return by its due date may obtain a 60-day extension of time for filing. To obtain the extension, the taxpayer must file a petition for extension of time with the Indiana Department of State Revenue before the due date of the return and include with the petition a payment of 90% of the tax that the taxpayer reasonably expects to be due. See I.C. 6-8.1-6-1(a). Upon receiving the petition and payment, the Department can be expected to grant the extension. See I.C. 6-8.1-6-1(a).

The Indiana Department of State Revenue may grant additional extensions of time if the taxpayer's extension petition includes a showing of good cause as to why the return cannot be filed. See I.C. 6-8.1-6-1(b). The Department
may extend the due date upon subsequent petitions to any date the Department considers reasonable under the circumstances. Each petition for a subsequent extension must be filed before the current extension expires. See I.C. 6-8.1-6-1(b).

If the Internal Revenue Service allows an extension for a taxpayer's federal income tax return, the Indiana income tax return automatically is extended 30 days longer than the federal extension expiration date. The taxpayer receiving a federal extension must pay to the Internal Revenue Service 90% of the tax that the taxpayer reasonably expects to be due by the original due date. See I.C. 6-8.1-6-1(c). The Indiana Department of State Revenue compares the amount the taxpayer pays to the Internal Revenue Service with the amount paid to the Indiana Department of State Revenue to determine if the payment to the Indiana Department of State Revenue is 90% of the amount of tax the taxpayer reasonable expects to be due. Failure to pay the 90% will not revoke the Indiana extension, but it may subject the taxpayer to penalties for failure to pay tax. See I.C. 6-8.1-6-1(c).

If a taxpayer fails to file a return by the due date (or the extended due date, if an extension has been granted), the Indiana Department of State Revenue mails the taxpayer a notice that the taxpayer has 30 days to file a return. See I.C. 6-8.1-10-3(a). Filing a blank, substantially blank, or unsigned return is considered a failure to file a return. See I.C. 6-8.1-10-2(c). The 30-day period begins when the notice is mailed. See I.C. 6-8.1-10-3(a). The Indiana Department of State Revenue has authority to prepare a return for a taxpayer who does not file a return within 30 days after the notice of failure to file is mailed. This return is prepared based on the best information available to the Department and is presumed prima facie correct. See I.C. 6-8.1-10-3(a).

IV. Confidentiality Of Taxpayer Information

Information provided by a taxpayer on reports filed under provisions of law related to the listed taxes is confidential. See I.C. 6-8.1-7-1(a). Employees of the Indiana Department of State Revenue who disclose any confidential information derived from a review of a taxpayer's records are guilty of a Class C misdemeanor. I.C. 6-8.1-7-3. In addition, an employee who discloses confidential information can be discharged immediately. See I.C. 6-8.1-7-3.

Exceptions to the duty of confidentiality imposed under I.C. 6-8.1-7-1 include disclosures in accordance with a judicial order and disclosures to Department of State Revenue members, to any person authorized to represent the state in an action in respect to the amount of tax due, to tax departments of other states, to state and county welfare officials, and to a Title IV-D agency seeking information about an absent parent. See I.C. 6-8.1-7-1. Limited information can be given to educational institutions inquiring about an individual who is delinquent in repaying educational loans and to township assessors and qualified people inquiring about the amount of gasoline sold. See I.C. 6-8.1-7-1(d) and (e). Results of statistical studies conducted by the Department may be disclosed where the identity of a taxpayer is not divulged and the taxpayer cannot be associated with information in the study that was derived from the taxpayer's return. See I.C. 6-8.1-7-2(a) and (b). A person may request information concerning whether an individual filed an Indiana income tax return for a particular year, but the Department may not disclose the information until after the close of the calendar year following the year in which the return should have been filed. See I.C. 6-8.1-7-2(c).

V. Retaining Information By The Taxpayer

Every taxpayer subject to a listed tax must retain books and records and any filed state or federal tax returns for at least three years after the date the final payment of the particular tax liability was due. If the taxpayer enters into an extension of time agreement with the Indiana Department of State Revenue, then the taxpayer must maintain his records until the assessment period is over. See I.C. 6-8.1-5-4. These must be kept so that the IDSR can determine by reviewing these books and records the amount, if any, of the person's tax liability. See I.C. 6-8.1-5-4. The IDSR is entitled to inspect books, records, and returns of the taxpayer. The taxpayer must allow inspection of these by the IDSR or its authorized agents at all reasonable times. In addition, a person must also, upon request by the IDSR, furnish a copy of any federal returns that the taxpayer has filed. Id.

VI. Assessment Time Periods

The IDSR has three years from the end of the calendar year which contains the taxable period for which the return is filed in assessing the state gross retail or use tax, the gasoline tax, the special fuel tax, the motor carrier fuel
tax, the oil inspection fee, or the petroleum severance tax. See I.C. 6-8.1-5-2. The taxpayers who deal with these specific listed taxes file monthly returns.

The IDSR audits these monthly returns in three year cycles. The three years from the end of the calendar year assessment period makes this possible. For example, if a taxpayer files a monthly return in March 1982, the IDSR has until December 1985 to issue a "Notice of Proposed Assessment" (discussed in detail later) for that particular month. This gives the IDSR all of 1985 to evaluate the taxpayer's returns for the months in 1982 through 1984.

There is no statute of limitations for fraudulent, unsigned or substantially blank returns. There is also no time limitation for assessing tax if no return is filed. See I.C. 6-8.1-5-2(c). The IDSR has six years to assess tax where the taxpayer files an adjusted gross income tax return or a supplemental net income tax return and understates his income by at least 25%. See I.C. 6-8.1-5-2(b). The IDSR and the taxpayer may agree to an extension of the assessment period if the agreement is within the time in which an assessment may properly be made. The agreement must contain the date to which the extension is made and a statement that the taxpayer agrees to preserve the necessary records during this period. There may be more than one extension permitted. See I.C. 6-8.1-5-2(d).

The courts have held that principle officers who were responsible for remitting the tax of their corporations are not entitled to notice of personal liability. This issue often surfaces when the corporation has been assessed within the statute of limitations and is later unable to pay its liability after the statute has run. The principle officer will be deemed to have also received timely notice. See Van Orman v. State, 416 N.E.2d 1301 (Ind. App. 1981); Smiley v. State Department of Revenue 416 N.E.2d 855 (Ind. App. 1981).

VII. The Audit Procedure

To assist in collection and administration of the listed taxes, the Commissioner of the Department of State Revenue is charged with establishing a Division of Audit. See I.C. 6-8.1-4-1(b). The Commissioner also has the duty to assign auditors. See I.C. 6-8.1-4-3(a). Statutory qualifications and limitations concerning auditors are described in I.C. 6-8.1-4-3.

Among the powers granted to the Division of Audit are the power to audit a statistical sampling of the returns filed for the listed taxes, the power to review federal tax returns, and the power to conduct audits requested by the Commissioner or a designee of the Commissioner. See I.C. 6-8.1-4-1(b). Auditors have full access to all state and local official records and they have the authority to inspect any books, records, or property of any taxpayer that are relevant to the determination of tax liabilities, the authority to detect and correct tax evasion, and the authority to employ the use of such devices and techniques as may be necessary to improve audit practices. See I.C. 6-8.1-4-2.

Most taxpayers are selected for audit based on numerical data reported on the return. For example, large corporations are usually audited every year because the numerical amounts of income deductions exceed the limits set by the Indiana Department of State Revenue for a mandatory audit. Other taxpayers are selected for audit on a random selection method, which is mandated by I.C. 6-8.1-4-1(b)(2).

Over the last decade, the Indiana Department of State Revenue has increased out-of-state audits (e.g., on out-of-state corporations liable for Indiana sales tax). This increased emphasis has been extremely successful. In 1974, the last year in which the Indiana Department of State Revenue published an annual report, out-of-state audits resulted in collections of nearly $400 for each audit hour expended. In-state audits resulted in only $50 for each audit hour. See Indiana Dept. of Revenue Annual Report - 1974.

On July 21, 1986, Indiana joined the states of Illinois, Michigan, Minnesota, Ohio, and Wisconsin by signing the Great Lakes Interstate Sales Compact. The express purpose of joining the Compacts was to ferret out those out-of-state vendors who sold to customers in the Compact, but who had never collected or paid sales tax to the state's revenue department. Entering the agreement was made possible by the 1980 General Assembly's enactment of I.C. 6-8.1-3-7, which allows the Indiana Department of Revenue to enter into reciprocal agreements with the United States government or other states to "furnish and receive information relevant to the administration and enforcement of the listed [Indiana] taxes." See I.C. 6-8.1-3-7. The effectiveness of this audit program remains to be seen, but its potential to raise litigation as well as revenues is great. For background information on the Compact, see 21 Ind. L. Rev. 383, 402-411 (1988).

Once a taxpayer's return is selected for auditing, the return is sent to the Field Audit Division of the Indiana Department of State Revenue. This division sends the case file to one of the 12 field offices. Fifty percent of the population in the state of Indiana is within 15 miles of one of the field offices. The regional supervisor at the field office assigns the case file to an auditor. The auditor then contacts the taxpayer and sets a time for an audit, which is held at the taxpayer's residence or place of business or at the field office.
The auditor prepares the audit and sends the case file to the Audit Division in Indianapolis. The Audit Division separates the completed audits into four categories: increase in liability (add tax), decrease in liability (refund), no tax change, and special audits (e.g., bankruptcy receivership). An audit that results in an increase in liability is sent to the Audit Review Section. The audit is checked for accuracy concerning correct application of the tax laws. After review and approval, the completed audit is forwarded to the Indiana Department of State Revenue Deputy Commissioner for the determination of any applicable penalties.

When the audit is affirmed by the Audit Review Section and the Indiana Department of State Revenue Deputy Commissioner, a form showing the increased tax liability, penalties, and interest goes to the Data Processing Division. The computer system generates a "Notice of Proposed Assessment" which is sent to the taxpayer. The "Notice of Proposed Assessment" contains the taxpayer's name, identification or social security number, the type of tax involved, the period of time the audit encompasses, and the amount of the proposed assessment, penalty and interest. The mailing of the "Notice of Proposed Assessment" constitutes formal assessment and is prima facie evidence that the Indiana Department of State Revenue's claim for the unpaid tax is valid. See I.C. 6-8.1-5-1(a).

Indiana Code 6-8.1-5 governs assessment of taxes and the appeals process within the IDSR under this process. If the IDSR determines that a person has not paid the proper amount of tax through the audit process discussed above, then it issues a "Notice of Proposed Assessment" to the taxpayer. It contains the taxpayer's name, identification or social security number, the type of tax involved, the period of time the audit encompasses, and the amount of the proposed assessment, penalty and interest. This notice will also indicate that the IDSR grants a 60-day period within which to either pay the assessment or to file a written protest. The assessment is prima facie correct, and the burden of proving the assessment wrong rests with the taxpayer. See I.C. 6-8.1-5-1; 45 IAC 15-5-1. However, the Commissioner's signature must be present on the notice of assessment in order for the notice to constitute an official document of the IDSR. See I.C. 6-8.1-3-5.

VIII. Options Of Appeal From The Notice Of Tax Due

When the taxpayer files a protest and requests a hearing within the 60 day period, the IDSR will conduct an administrative hearing and set the hearing date at the IDSR’s earliest convenience and notify the person by mail of the time date and location of the hearing. The taxpayer must protest and ask for a hearing in writing. However, a taxpayer may submit written objections to the assessment in lieu of a hearing. Regardless, the IDSR may correspond with the taxpayer prior to a hearing. See 45 IAC 15-5-2. The purpose of this "informal protest hearing" is to identify the taxpayers specific objections to the assessment. The IDSR, by its authority under I.C. 6-8.1-3-3, adopted rules regarding such hearings which became effective in 1987. See 45 IAC 14-5-3. These rules set forth eight procedures to be followed and are discussed below.

When a protest is timely received, the IDSR commences the hearing process by forwarding the IDSR's file to the administrator of the tax division which initiated the procedure. The IDSR then sets a hearing date and informs the taxpayer of the time and place. See I.C. 6-8.1-5-1; 45 IAC 5-15-3. After a date has been set, the IDSR has the discretion to grant extensions, continuances and adjournments for good cause. However, if a taxpayer fails to appear at the scheduled hearing without obtaining a continuance, the taxpayers protest will be denied. See 45 IAC 5-15-3. If the taxpayer chooses to file any legal memoranda regarding the taxpayer's protest, the taxpayer may do so if such material is submitted to the IDSR at least five days before the hearing date. However, no written document regarding the taxpayer's protest is required. In fact, the taxpayer has great discretion in how the taxpayer protests the taxpayer's assessment. The taxpayer may elect to have the taxpayer's case resolved based solely on a telephone conference or solely on a written brief in lieu of a hearing. See 45 IAC 15-5-3. If the taxpayer makes one of the preceding elections, the taxpayer forever waives the right to an oral hearing. The IDSR will decide the issues from the best evidence available in each particular case, regardless of the evidence form. The burden of proof is on the taxpayer to demonstrate that the assessment was incorrect in some way. See 45 IAC 15-5-3.

The hearing, if chosen, is informal in nature. The purpose is to afford the taxpayer an opportunity to air his objections to the assessment by the IDSR. The rules of evidence do not apply. Furthermore, as stated earlier, the IDSR is excluded from the requirements of the Administrative Orders and Procedures Article. See I.C. 4-21.5-2-4(a). There will be no decision made at the hearing. See 45 IAC 15-5-4. The hearing officer’s job is to gather facts concerning the issue or issues involved. The hearing officer has no authority to decide the issues or make any compromise with the taxpayer. Requests for rulings are to be directed to the administrator of the tax for which a ruling is sought. These requests must have all of the relevant facts set out in writing or the IDSR will not issue a ruling. See 45 IAC 15-3-2. Because any subsequent judicial hearing is de novo, see United Artists Theatre Circuit v. Indiana
requesting and being granted an injunction." See Video Tape Exchange Co-Op of America v. Indiana Department
Depts of Revenue, 459 N.E.2d 755 (Ind. Ct. App. 1984), evidence not introduced at the IDSRS hearing can be
introduced at a subsequent judicial hearing. Note that this is not the rule for property taxes. See Gatlin Gun Club v.
Indiana Bd. of Tax Comm'rs, 420 N.E.2d 1324 (Ind. Ct. App. 1981). Taxpayers may ask for oral advice from the
IDSRS but such advice is not binding on the IDSRS. See 45 IAC 15-3-2(e).

After conducting the hearing, the IDSRS will notify the taxpayer of the IDSRS's ruling by mailing a "Letter of
Findings" to the taxpayer. See I.C. 6-8.1-5-1. This "Letter of Findings" will (1) sustain the assessment in the
assessment's entirety, (2) sustain the protest in the protest's entirety, or (3) partially sustain the protest. See 45 IAC
15-5-4. The letter will be sent with a notice of tax due indicating the updated interest. See 45 IAC 15-5-4. In the case
where the protest is partially sustained, the letter will be mailed to the taxpayer along with a revised notice of tax due
consistent with the supplemental assessment and the original notice will be adjusted or cancelled. See 45 IAC 15-5-4.
The "Letter of Findings" is based on the specific factual situation of the taxpayer(s) involved. The IDSRS publishes
all “Letters of Findings” in the Indiana Register. See I.C. 6-8.1-3-3.5. Only the taxpayer to which the ruling was
directed is entitled to rely on it. However, other taxpayers with an identical factual situation may on these rulings for
informational purposes. Like the situation with rules, in general, a ruling is not retroactively modified or revoked.
However, in the case that a ruling is revoked retroactively, the IDSRS must provide notice to the taxpayers whose tax
liability was directly involved in such ruling. Changes in the law or decisions by any Indiana Court can act as notice
of a possible revocation of a ruling. Some reasons to revoke or modify a rule include: (1) a misstatement or omission
of material facts; (2) A material change in facts since the time of the ruling; (3) a change in the applicable statute, case
law, or regulation; (4) the taxpayer directly involved in the ruling did not act in good faith. See 45 IAC 15-3-2. This
is by no means an exhaustive list of reasons why the IDSRS may retroactively revoke or modify a ruling.

Before the IDSRS issues a “Letter of Findings” for public view, it must provide a copy to the taxpayer and the
IDSRS must notify the taxpayer of his right to delete information such as the name and address of the taxpayer, any
trade secret, or any information that would constitute an unwarranted invasion of privacy before publication. If the
taxpayer decides to do this, he must make a request in writing within 30 days and include a copy of the “Letter of
Findings” marking the parts the taxpayer wants to have deleted. However, if these deleted items would make the
position of the IDSRS in the letter unclear, then the deleted items may be reinserted into the letter. See I.C. 6-8.1-3-3.5.
In addition to full disclosure of its findings, the IDSRS must maintain a record of all funds that are received and
disbursed and copies of all returns filed with the IDSRS for at least three years. See I.C. 6-8.1-3-6.

After receipt of the letter, the taxpayer may within thirty days petition for a rehearing by alleging that material
facts were not considered at the original hearing. A rehearing is granted at the discretion of the IDSRS Commissioner
or Deputy Commissioner but generally only under unusual circumstances where it would be in the best interests of
the taxpayer and the state. See I.C. 6-8.1-5-1. If a rehearing within the IDSRS is granted, it will not be done so de novo
unless an abuse of discretion has been alleged. Existing evidence will not be re-weighed and absent new evidence,
the IDSRS will reverse only if the decision is "clearly against the logic and effect of the facts and circumstances." See
45 IAC 14-5-5.

A demand notice will be issued if the 60-day period expires without a protest being filed, or if the IDSRS
conducts an administrative hearing and determines that tax is due. This demand notice will allow the taxpayer ten
days to pay the liability. If payment is not received within ten days, then the IDSRS may issue a tax warrant for the
collection of the tax. See I.C. 6-8.1-5-1 6-8.1-8-2. The warrant is issued to the sheriff of the taxpayer's county. The
warrant is also filed with the clerk of the court in the taxpayer's county, in which case the warrant becomes a judgment
lien against the taxpayer. See I.C. 6-8.1-8-2

IX. The Indiana Tax Court

A taxpayer has the right to appeal any part of the refund decision to the Indiana Tax Court, regardless of
whether the taxpayer protested the tax payment or already has accepted a refund. See I.C. 6-8.1-9-1(c); I.C. 33-3-5-1
seq. As to the taxes which are administered by the Indiana Department of State Revenue (other than the Indiana
inheritance tax and the Indiana estate tax, there are two practical routes which the taxpayer may take on the road to
the Indiana Tax Court. The Indiana Tax Court, in reading the applicable statute, has confirmed that there are two ways
for a taxpayer to bring a case before the Indiana Tax Court: "(1) payment of the tax and suing for refund . . . and (2)
requesting and being granted an injunction." See Video Tape Exchange Co-Op of America v. Indiana Department
of State Revenue, 512 N.E.2d 478, 479 (Ind. Tax. 1987).

Under the first route, the taxpayer must pay the tax involved to the Indiana Department of State Revenue, and
then file a claim for refund of the tax. Such a claim for refund must be filed with the Indiana Department of State

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consider the claim for refund, and during that period, the Indiana Department of State Revenue may (at its option) hold an informal hearing on the matter. Also, within the 180-day period, the Indiana Department of State Revenue may render a final decision on the refund claim, and then, mail a copy of the decision to the taxpayer. See I.C. 6-8.1-9-1(b). If a decision is not rendered by the Indiana Department of State Revenue within the 180-day period, then the taxpayer may treat the claim for refund as being denied, and initiate an appeal to the Indiana Tax Court, as discussed below. See I.C. 6-8.1-9-1(c).

In general, a taxpayer may file an original tax appeal with the Indiana Tax Court in regard to all or a portion of the tax which is in dispute, and the taxpayer may do so regardless whether the taxpayer has filed a protest with the Indiana Department of State Revenue and regardless whether the taxpayer has accepted a refund of the tax. "If the person disagrees with any part of the department's decision, he may [then] appeal the decision, regardless of whether or not he protested the tax payment or whether or not he has accepted a refund. The person must file the appeal with the court." See I.C. 6-8.1-9-1(c). However, the Indiana Tax Court does not have jurisdiction over such an appeal if: "(1) the appeal is filed more than three years after the date the claim for refund was filed with the department; (2) the appeal is filed more than ninety days after the date the department mails the decision of denial to the person; or (3) the appeal is filed before the decision is issued and before the one hundred eighty first day after the date the person files the claim for refund with the department." See I.C. 6-8.1-9-1(c).

The second practical route for a taxpayer to obtain a hearing by the Indiana Tax Court from a final determination of the Indiana Department of State Revenue is for the taxpayer to file a petition for injunctive relief with the Indiana Tax Court under I.C. 33-3-5-11 and to also file, at that time, an original tax appeal with the Indiana Tax Court. Specifically, the taxpayer's petition would request the Indiana Tax Court to issue an injunction in order to prevent the collection of the tax by the Indiana Department of State Revenue. Such a request for injunctive relief would, of course, only be made in cases in which the tax has not yet been paid and the taxpayer seeks to prevent the Indiana Department of State Revenue from collecting the tax. The most common situation in which such relief would be sought is the case in which the Indiana Department of State Revenue has assessed a tax, the taxpayer has protested the assessment of the tax by way of an administrative action before the Indiana Department of State Revenue, and the Indiana Department of State Revenue has issued a final determination, in a "Letter of Findings", which is adverse to the taxpayer's protest position.

In order to stop collection of the tax, the taxpayer must then file the taxpayer's petition for injunctive relief with the Indiana Tax Court, and the taxpayer would normally file the taxpayer's original tax appeal with the Indiana Tax Court at the same time.

Although the taxpayer in most cases would want to file the taxpayer's original tax appeal with the Indiana Tax Court at the same time when the taxpayer files the taxpayer's petition for injunctive relief, the Indiana Tax Court has held that the taxpayer is not required to do so. That is, a taxpayer can come before the Indiana Tax Court prior to the time when an original tax appeal is filed (or is even ripe for filing) by filing only a petition for injunctive relief under I.C. 33-3-5-11. This statutory provision sets forth that a "taxpayer who wishes to enjoin the collection of a tax pending the original tax appeal must file a petition with the tax court in order to enjoin the collection of tax. The petition must set forth a summary of: (1) the issues that the petitioner will raise in the original tax appeal and (2) the equitable considerations for which the tax court should order the collection of tax to be enjoined." See I.C. 33-3-5-11(b) (emphasis added). Relying on this emphasized language, the Indiana Tax Court has held that the Indiana Tax Court is empowered to enjoin collection of taxes even before "an original tax appeal [is] filed or [is] ripe for filing at the time the injunction is requested." See American Trucking Association v. State, 512 N.E.2d 920, 922 (Ind. Tax 1987). The Indiana Tax Court wrote that it "is not necessary to determine here how much, if any, time may elapse after an injunction is granted before the original tax appeal must be filed, or be ripe for filing. Such determination is left for the future." See 512 N.E.2d at 922.

This jurisdictional twist is important because in the American Trucking case, some of the plaintiffs had not even paid the Supplemental Highway Use Fee in question nor had some of the plaintiffs proceeded with any action through the administrative process before the Indiana Department of State Revenue. The Indiana Department of State Revenue within three years of the later of: the due date of the applicable tax return; the date of payment of the tax; and, in the case of a tax return which is filed for the sales tax, or the use tax, or the gasoline tax, or the special fuel tax, or the motor carrier fuel tax, or the oil inspection fee, or the petroleum severance tax, the end of the calendar year which contains the taxable period for which the tax is returned is filed. See I.C. 6-8.1-9-1(a). This three-year limitation applies regardless whether the refund claim concerns the overpayment of a claim which is lawfully due or concerns a tax which is imposed or collected unlawfully. See Marhoefer Packing Co., Inc. v. Indiana Department of State Revenue, 301 N.E.2d 209, 214 (Ind. App. 1973). The Indiana Department of State Revenue has 180 days to consider the claim for refund, and during that period, the Indiana Department of State Revenue may (at its option) hold an informal hearing on the matter. Also, within the 180-day period, the Indiana Department of State Revenue may render a final decision on the refund claim, and then, mail a copy of the decision to the taxpayer. See I.C. 6-8.1-9-1(b). If a decision is not rendered by the Indiana Department of State Revenue within the 180-day period, then the taxpayer may treat the claim for refund as being denied, and initiate an appeal to the Indiana Tax Court, as discussed below. See I.C. 6-8.1-9-1(c).
Revenue and Indiana State Board of Tax Commissioners, no doubt, may, in such cases, continue to argue that the Indiana Tax Court should not grant such injunctive relief before the taxpayer meets other statutory administrative procedures. Indeed, a strong argument can be made, based on other language of the injunctive relief statute which the Indiana Tax Court did not discuss in the American Trucking option, that the Indiana Tax Court does not have jurisdiction to hear a petition for injunctive relief until an original tax appeal is filed. This argument is based on the following language of I.C. 33-3-5-11(c), which provides: "After a hearing on the petition [for injunctive relief] is filed under subsection (b), the tax court may enjoin the collection of the tax pending the original tax appeal, if the tax court finds that: (1) the issues raised by the original tax appeal are substantial . . . ." See I.C. 33-3-5-11(c) (emphasis added). This specific language used by the Indiana General Assembly appears to contemplate that a petition for injunctive relief should not pre-date the filing of the original tax appeal.

The words "pending the original tax appeal" suggest that injunctive relief is proper only while the original tax appeal is underway. Indeed, the common definition of "pending" is "during" or "while". Black's Law Dictionary, for instance, defines the word as "Begun, but not yet completed; during; before the conclusion of; prior to the completion of; unsettled; undetermined; in process of settlement or adjustment." See Black's Law Dictionary, p. 1021 (5th ed. 1979). This authority further provides that "an action or suit is 'pending' from its inception until the rendition of final judgment." Id. Moreover, the first subsection of I.C. 33-3-5-11(c) instructs the Indiana Tax Court to look to "issues raised by the original tax appeal" in order to rule on the injunctive relief petition. Again, it seems that this language contemplates that an original tax appeal would already be on file in order for injunctive relief to be considered. There is at least a strong argument that the Indiana General Assembly would have selected different words than "pending" and "raised" had it intended to provide for injunctive relief prior to the existence of an original tax appeal. Certainly, there is at least room for valid disagreement on the issue because the Indiana General Assembly did use more forward-looking language in I.C. 33-3-5-11(b), which was relied on by the Indiana Tax Court in American Trucking and provides that the taxpayer's petition for injunctive relief must set forth the issues "that the petitioner will raise in the original tax appeal." See I.C. 33-3-5-11(b)(1) (emphasis added). However, for now, it is clear that the Indiana Tax Court will accept such petitions for injunctive relief before the filing of an original tax appeal, and this position will, undoubtedly, result in fairer treatment of Indiana taxpayers. Thus, it is highly likely that the Indiana Supreme Court, when it faces this issue and then considers the ambiguity of the statute, will determine that the Indiana Tax Court has the authority to allow such injunctive relief prior to the filing of an original tax appeal.

In theory, there is a third route which a taxpayer may take in order to present the taxpayer's case to the Indiana Tax Court. Under I.C. 33-3-5-2, the Indiana Tax Court has "exclusive jurisdiction over any case that arises under the tax laws of the State and that is an initial appeal of a final determination made by the Indiana Department of State Revenue of the Indiana Board of Tax Commissioners." (emphasis added). Thus, if the Indiana Department of State Revenue issues a "Letter of Findings" adverse to a taxpayer's administrative protest, and if such action is deemed a "final determination" under I.C. 33-3-5-2, it would seem that the Indiana Tax Court would have jurisdiction over an original tax appeal seeking review of the "Letter of Findings". Under this third scenario, the Indiana Department of State Revenue would have issued a "Notice of Proposed Assessment" to the taxpayer. The taxpayer in turn would have had 60 days to file a written protest with the Indiana Department of State Revenue. See I.C. 6-8.1-5-1. The Indiana Department of State Revenue would then hear the matter through the administrative process, and if it found that tax was due, it would then issue its "Letter of Findings" denying the taxpayer's protest before initiating collection proceedings. From this action (which should be construed as a final determination) of the Indiana Department of State Revenue, the taxpayer may appeal directly to the Indiana Tax Court by filing an original tax appeal with the Indiana Tax Court without filing a petition for injunctive relief. See I.C. 33-3-5-2.

If this third route to the Indiana Tax Court is utilized, there is nothing to prevent the Indiana Department of State Revenue from initiating collection proceedings and actually collecting the tax during the original tax appeal. If the taxpayer eventually prevails on the original tax appeal, then the taxpayer should file a claim for refund with the Indiana Department of State Revenue based on the Indiana Tax Court's decision.

If the Indiana Department of State Revenue grants a refund, the Department must apply the refund against any amount of that same tax that the taxpayer owes. See I.C. 6-8.1-9-2(a). If there is still an excess amount of refund, the Department may apply it to any listed tax that has been assessed against the taxpayer and is currently due. See I.C. 6-8.1-9-2(a). Arguably, the Department may not credit any refund if the refund was determined by a court. See I.C. 6-8.1-9-2(b). However, the Department probably will try to setoff a court-determined refund against any other debt the taxpayer owes the Indiana Department of State Revenue. There has been no appellate court interpretation of this provision.

If the Indiana Department of State Revenue does not pay or credit a refund within 90 days from the later of the date the tax payment was due or the date it was paid, the Department must pay interest on the refund. See I.C.
X. Filing For Refund

A taxpayer who pays more tax, penalties, and/or interest than he feels is due for a taxable year can file a claim for refund with the Indiana Department of State Revenue. See I.C. 6-8.1-9-1(a). The right to refund does not depend on whether the tax was paid voluntarily or involuntarily. R.B. Raybern & Co. v. Indiana Sec. Bd., 232 N.E.2d 891, 893 (Ind. App. 1968). A taxpayer requesting a refund can file either a refund form provided by the Indiana Department of State Revenue or a written statement that sets forth all relevant taxpayer identification, the amount of the refund claimed, and the reasons the taxpayer believes he or she is entitled to the refund.

A refund claim must be filed within three years after the later of the due date of the return, the date of payment, or, in the case of state gross retail or use tax, the gasoline tax, the special fuel tax, the motor carrier fuel tax, the oil inspection fee, or the petroleum severance tax, the end of the calendar year that contains the taxable period for which the return is filed.  See I.C. 6-8.1-9-2(c). The applicable rate of interest is the rate established by the Indiana Department of State Revenue Commissioner (the "adjusted rate" established under I.C. 6-8.1-10-1(c) and discussed above). See I.C. 6-8.1-9-2(c). The taxpayer may request the Department to credit the refund against a future tax liability (I.C. 6-8.1-9-2(a)), but interest will not run on the credited amount if the refund is credited within 90 days after the refund was granted.

If a taxpayer is entitled to a refund, any "claimant agency" to whom the taxpayer owes a "certified delinquent debt" may file an application with the Indiana Department of State Revenue for the proceeds of the refund. See I.C. 6-8.1-9.5-1. "Claimant agency" is defined as "any state department, institution, commission, committee, board, division, bureau, authority, officer, or official." See I.C. 6-8.1-9.5-1.

To obtain the refund proceeds, the claimant agency must file an application for set-off with the Indiana Department of State Revenue before November 30 of the year preceding the calendar year in which a tax refund is payable by the Department. See I.C. 6-8.1-9.5-3(a). This application must be refiled each year the claimant agency desires the refund proceeds. See I.C. 6-8.1-9.5-3(b). If a claimant agency files an application, the Department must notify the agency if the taxpayer is entitled to a refund. See I.C. 6-8.1-9.5-4. The claimant agency has 15 days after receipt of the notice to inform the Indiana Department of State Revenue and the taxpayer of the agency's intent to set-off. The taxpayer is entitled to a hearing with the claimant agency on the set-off if within 30 days after receipt of the agency's notice to the taxpayer the taxpayer files a written notice that the taxpayer intends to contest the set-off. See I.C. 6-8.1-9.5-6 and I.C. 6-8.1-9.5-7.

If the result of the hearing is a determination that the debt is valid, the claimant agency so informs the Indiana Department of State Revenue who must pay the appropriate amount from the refund to the agency. See I.C. 6-8.1-9.5-8. The Department may retain a collection fee of 15% for its services. See I.C. 6-8.1-9.5-10.

If a taxpayer appeals the denial of the taxpayer's refund claim in the Indiana Tax Court and the Tax Court grants a refund, it is questionable whether a claimant agency can gain access to the proceeds. Arguably, the mandatory language in I.C. 6-8.1-9-2(b) would not allow a claimant agency the set-off. However, the Indiana Department of State Revenue would be inclined to grant the set-off to the claimant agency.
XI. Tax Warrants And Liens

If the taxpayer does not act within ten days of receiving the Notice of Tax Due the IDSR may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs, and damages. See I.C. 6-8.1-8-2(a). The IDSR usually sends a Pre-Warrant Final Notice to the taxpayer before issuing a warrant to the sheriff.

The IDSR must file a tax warrant with the court clerk or sheriff in the county where the taxpayer owns property within five days after the IDSR issues the warrant. See I.C. 6-8.1-8-2(c). After the tax warrant is filed, it becomes a judgment lien against the person owing the tax. See I.C. 6-8.1-8-2(e). This judgment lien attaches to all the person's interest in any property within that county, except negotiable instruments not yet due. See I.C. 6-8.1-8-2(e).

Judgment liens are valid for ten years after they are filed. The IDSR may renew a lien for additional ten year periods by filing an alias tax warrant. See I.C. 6-8.1-8-2(f). The IDSR or sheriff may release the lien after it has been satisfied with payment, property, or by a surety. See I.C. 6-8.1-8-2(g). The county sheriff has 120 days from the date the lien is entered to levy and satisfy that lien. See I.C. 6-8.1-8-3(a). Collection may be made by garnishing wages and levying on and selling any interest in the taxpayer's property rights. Id. The county sheriff is permitted to keep the lien for up to one year if he has begun collecting the tax and believes that he or she can accomplish the collection procedure within the year. After either period of time, i.e., the 120 days or one year period, the sheriff must return the lien to the IDSR. See I.C. 6-8.1-8-3(c). The IDSR then uses private collection methods to collect the judgment lien. See I.C. 6-8.1-8-4.

The IDSR also may employ special counsel in any county to institute legal action for the collection of a delinquent tax plus the interest and penalties. See I.C. 6-8.1-8-4. The IDSR uses collection attorneys in about seventy (70) counties. It uses collection agencies in the remaining counties. If the collection attorneys are not successful within a six (6) month period, the IDSR usually turns the judgment liens over to a collection agency in the respective county. After the judgment lien has been entered, the IDSR may seek a court order restraining the taxpayer from conducting business in Indiana while the lien remains in effect. See I.C. 6-8.1-8-5. The IDSR may also ask the court in the county where the taxpayer resides or is domiciled to place the taxpayer's property into receivership if the tax is not paid within 60 days after the date that it is due. See I.C. 6-8.1-8-6. The receiver, in place of the taxpayer, may bring and defend any action, receive all funds, collect any debts owed to the taxpayer, and perform any other duties under Indiana law or court authority. See I.C. 6-8.1-8-6(a). Both the taxpayer and the IDSR of Revenue have ten days after the court order granting or refusing a receiver's appointment to appeal the order to the Indiana Tax Court. See I.C. 6-8.1-8-6(b). The receiver's powers are suspended during the appeal; however, the taxpayer must furnish a bond to cover any costs or damages resulting from the appeal. Id.

XII. Interest And Penalties

A person is subject to interest on deficiencies due to non-payment of any of the listed taxes and on any deficiency determined by the IDSR. See I.C. 6-8.1-10-1(a). The interest on deficiencies is assessed at an adjusted rate of interest established on or before November 1 of each year and shall be the percentage rounded to the nearest whole number that equals two percentage points above the average investment yield on state money for the state’s previous fiscal year, excluding pension fund investments. See I.C. 6-8.1-10-1(c). This established rate takes effect on January 1 of the subsequent year. Id. The established interest rate will also accrue on excessive tax payments that are not refunded or credited against a current or future tax liability within 90 days after a refund is granted. For purposes of interest charges, the filing of a substantially blank or unsigned return does not constitute a return. See I.C. 6-8.1-10-1(d).

A taxpayer may be subject to penalties for failing to file a return for any of the listed taxes or for failing to pay the full amount of tax shown on the taxpayer's return on or before the due date if that failure is due to negligence. See I.C. 6-8.1-10-2. The deficiency also will be assessed, subject to penalties, for failing to timely remit any tax held in trust for the state. Id. The penalty is 10% of any non-payment of tax or deficiency finally determined by the IDSR. Id.

The IDSR will waive this penalty if the taxpayer, subject to penalty, can make an affirmative showing that the taxpayer's failure to pay or timely file was due to reasonable cause and not to willful negligence. See I.C. 6-8.1-10-2(e). Reasonable cause must be pleaded in a declaration made under penalty for perjury. Id. It must also be filed with
the return or payment within the time prescribed for protesting assessments. Id. In IDSR v. Harrison Steel Castings, Co., 402 N.E.2d 1276 (Ind. App. 1980), a taxpayer who paid what he thought to be the proper sales and use tax on time and later paid assessment on audit on time was not subject to a tax penalty. Further, in IDSR v. Cave Stone, Inc., 409 N.E.2d 690 (Ind. App. 1980), a taxpayer who filed returns and paid sales and use taxes in each of the taxable years at issue, and where delay in payment regarding purchases of certain equipment and supplies was due to a bona fide dispute over interpretation of applicable tax statutes and not from negligence or intentional disregard of the law, was not liable for penalties. A taxpayer may also avoid penalty by obtaining a ruling from the IDSR before the end of a particular tax period on the amount of tax due for that taxable period. See I.C. 6-8.1-10-2(e). A 100% penalty may be assessed if a person fails to file a return or to make a full tax payment with that return with the fraudulent intent of evading the tax. See I.C. 6-8.1-10-4.

Generally, a taxpayer who owes money to the Indiana Department of State Revenue may pay by check. If the taxpayer makes payment with a check that is totally or partially dishonored, the Indiana Department of State Revenue may impose a penalty of the face amount of the check or 10% of the unpaid tax, whichever amount is smaller. See I.C. 6-8.1-10-5(a). For example, if a taxpayer makes partial tax payment by check for $1,000 on tax due of $5,000 and the check is dishonored for the full amount, the penalty is $500. However, if a taxpayer makes partial tax payment by check for $1,000 on tax due of $15,000 and the check is dishonored for the full amount, the penalty is $1,000.

The taxpayer can avoid the penalty for the dishonored check if the taxpayer can show there is reasonable cause why the check was dishonored. See I.C. 6-8.1-10-5(c). The Indiana Department of State Revenue has not published rules and regulations as to what constitutes reasonable cause, but it relies on case law that excuses the penalty if the taxpayer acted "in good faith and within a reasonable basis." See Indiana Dept. of State Revenue v. Harrison Steel Castings, 402 N.E.2d 1276, 1278 (Ind. App. 1980). Although Harrison Steel involved a question of the "use tax," the Department uses this standard in all cases where the Department is permitted by statute to excuse a penalty upon a showing of reasonable cause.

If the Indiana Department of State Revenue decides that there is insufficient showing of reasonable cause as to why the check was dishonored, the taxpayer has 10 days after the Department mails notification of dishonor to pay the tax with cash or some form of guaranteed payment. See I.C. 6-8.1-10-5(b). If the payment is not made within the 10-day period, the penalty is increased to the lesser of the face amount of the check or 100% of the unpaid tax. See I.C. 6-8.1-10-5(b).

If a taxpayer makes partial payment, the amount paid is credited first to penalties, second to interest, and last to the tax owed. See I.C. 6-8.1-8-15. This crediting scheme takes away a taxpayer's strategy to apply partial payments to tax principal first to stop or reduce interest from running on the principal.

XIII. Jeopardy Assessment

If the Indiana Department of State Revenue finds that a person owing taxes intends to quickly leave the state, remove the taxpayer's property from the state, conceal the taxpayer's property within the state, or do any other act that would jeopardize collection of taxes, the Indiana Department of State Revenue can terminate the tax year and make an immediate assessment and demand for payment without the ten-day notice required by 6-8.1-8-2. I.C. 6-8.1-5-3. The statute refers to this as a "jeopardy assessment," but it technically includes situations that are called "termination assessments" in the Internal Revenue Code. Payment includes interest and any penalties due.

The statutes and regulations do not specify what kind of showing is needed before the Indiana Department of State Revenue may institute a jeopardy assessment, but the Department uses a reasonable person standard (i.e., would a reasonable tax assessor institute a jeopardy assessment under similar circumstances?). All decisions to institute a jeopardy assessment are made by the Indiana Department of State Revenue Commissioner's office. There is no statutory remedy to review any jeopardy assessment instituted by the Indiana Department of State Revenue. If a taxpayer fails to immediately pay the assessment, a warrant will be issued to the sheriff requiring him levy and sell the real and personal property of the taxpayer to satisfy the amount due. See I.C. 6-8.1-5-3. The Indiana Department of State Revenue may, instead of issuing a warrant to the sheriff, accept a bond insuring the tax payment. See I.C. 6-8.1-5-3.