Indiana agencies charged with the responsibility of administering Indiana’s revenue laws are generally empowered by the Indiana General Assembly to adopt rules and regulations to assist them in this task. Although the Indiana Constitution directs that "the Legislative authority of the State of Indiana shall be vested in the Indiana General Assembly," Ind. Const. Art IV, § 1, the General Assembly can constitutionally delegate rulemaking authority to the agencies of the state of Indiana. Such delegation of power is proper if the state declares a legislative policy, establishes standards for carrying out the policy, or lays down an intelligible principle to which the agency must conform.” Schakel v. Review Board of the Ind. Employment Sec. Div., 235 N.E.2d 497, 500 (Ind. Ct. App. 1968). The role delegated to the agencies of the state is, among other things, to fill in the details of the State of Indiana's revenue laws.

Because agencies are creatures of their enabling document, they are required to act only in accordance with the authority granted to them and only in accordance with the procedures prescribed to them. Barco Beverage Co. v. Ind. Alcoholic Beverage Comm’n, 595 N.E.2d 250, 254 (Ind. 1992). This chapter will examine the required procedures for the adoption of rules and regulations by the Indiana Department of State Revenue, the Indiana State Board of Tax Commissioners, and the Indiana Unemployment Insurance Board. First, the rule making procedures for the Indiana Department of State Revenue and the Indiana State Board of Tax Commissioners will be explored. Both the Indiana Department of State Revenue and the Indiana State Board of Tax Commissioners are directed by statute to use the procedures outlined in the Indiana Administrative Adjudication Act for their promulgation of rules and regulations. I.C. 4-22-2-3 to 9-7. In addition, separate Indiana statutory provisions may provide for the supplementation or replacement of those general procedures. The Indiana General Assembly has also enumerated specific areas over which the Indiana Department of State Revenue and Indiana State Board of Tax Commissioners have rule making authority. It has further mandated rulemaking for certain duties of Indiana state agencies.

First to be examined will be the applicable general procedures of the Indiana Administrative Adjudication Act and then the specific statutory provisions applicable to the Indiana Department of State Revenue and the Indiana State Board of Tax Commissioners. This should begin with the definition of the word "rule" as found in the Indiana Code. The word "rule" means the whole or any part of an agency statement of general applicability that: (1) has or is designed to have the effect of law; and (2) implements, interprets, or proscribes: (A) law or policy; or (B) the organization, procedure, or practice requirements of the agency. I.C. 4-22-2-3(b). “Rulemaking action” is defined as "the process of formulating or adopting a rule.” See I.C. 4-22-2-3(c).

Occasionally, an issue arises whether a particular agency action was rulemaking or an adjudication. For example, a rule
adopted by an agency and purported to be of general applicability, may in fact apply only to a particular individual or municipality. In Blinzinger v. Americana Healthcare Corp., 466 N.E.2d 1371, 1375 (Ind. Ct. App. 1984), the court found that

The rulemaking function is distinguished from the adjudicatory function in that the former embraces an element of generality, operation upon a class of individuals or situations, whereas an adjudication operates upon a particular individual or circumstances. In addition, the exercise of administrative rulemaking power looks to the future whereas adjudication operates retroactively upon events which occurred in the past.

In general terms, the Indiana Administrative Adjudication Act prescribes six procedures for an Indiana agency's rulemaking function. These are:

1. Publication of notice (IC 4-22-2-24);
2. Public hearing (IC 4-22-2-26);
3. Adoption by the agency (IC 4-22-2-29);
4. Submission of the rule to the attorney general for approval (IC 4-22-2-32);
5. Submission of the rule to the governor for approval (IC 4-22-2-34); and
6. Submission of the rule to the secretary of state for filing (IC 4-22-2-35).

The first procedure is for the publication of notice. An agency is required by statute to notify the public of its intention to adopt a rule. It must do so by publication of a notice of a public hearing once in one newspaper of general circulation in Marion County, and by one publication of such notice and the complete text of the proposed rule in the Indiana Register. I.C. 4-22-2-24 (b)-(c). The notice must include the date, time, and place of the public hearing, a general description of the subject matter of the proposed rule, and an explanation that the proposed rule can be inspected and copied at the office of the agency. I.C. 4-22-2-24(d). All publication requirements must occur at least twenty-one days before the date scheduled for the hearing. I.C. 4-22-2-24(e). In addition, the agency has one year from the date of publication in the Indiana Register to comply with the necessary requirements and obtain the approval of the governor for the proposed rule. If the agency determines that a rule cannot be adopted within one year, the agency must, before the two hundred fiftieth day, notify the administration oversight committee in writing of the reasons why the rule will not be adopted and the expected date the rule will be complete and when the rule will be approved by the governor. A failure to do so renders a later approval ineffective; and the rule can become effective only through new rulemaking action. I.C. 4-22-2-25.

The second procedure is for a public hearing. Section 26 of chapter 2 of the Indiana Administrative Adjudication Act directs the agency to conduct a public hearing on every proposed rule that has been published pursuant to I.C. 4-22-2-24. Such hearing must convene on the date and at the time and place specified in the published notices. I.C. 4-22-2-26(b). However, the
agency has authority to recess the hearing and reconvene it at a later time by announcing the new date, time, and place at the
original hearing before recess and recording its announcement in the agency's record of the hearing. I.C. 4-22-2-26(d). The
agency can conduct the hearing in any informal manner that provides for an orderly presentation of comments and avoids undue
repetition. However, the agency cannot deny any person at the hearing the opportunity to be heard through oral or written facts
or argument. See I.C. 4-22-2-26(c).

Section 27 of Chapter 2 mandates that the agency must fully consider the comments received at the public hearing, and
directs that it may consider any other information before adopting the rule. This requirement of full consideration is complied
with if the individuals who will finally adopt the rule attend the hearing or review a written record or summary of it. I.C. 4-22-2-
27. In addition, the Indiana economic development council may review and comment on any proposed rule and suggest
alternatives to reduce the burden that a rule would impose on businesses. If the Indiana economic development council chooses
to comment or offer suggestions, the agency must respond in writing before adopting the rule. See I.C. 4-22-2-28(a). If the
proposed rule would have an estimated economic impact greater than five hundred thousand dollars on the regulated entities,
the agency must submit the proposed rule to the legislative services agency. This legislative services agency must prepare a fiscal
analysis concerning the effect of the rule. This analysis is a public document and it must be distributed to any interested party
upon request. The agency proposing the rule must consider this fiscal impact statement as part of the rulemaking process. IC
4-22-2-28(b).

The third procedure of rulemaking concerns the adoption rules. After the public hearing is held and comments received,
considered, and responded to if necessary, an Indiana state agency may, according to I.C. 4-22-2-29:

(1) adopt the rule as published in the Indiana Register;
(2) adopt a rule that consolidates part or all of several proposed and published rules;
(3) adopt one or more consolidated rules in two or more separate adoption actions; or
(4) adopt a revised version of a published proposal and include provisions that were not included in the publication.

However, the agency may not adopt any rule that "substantially differs" from the published proposals, unless the rule is the
“logical outgrowth of any proposed rule as supported by any written comments submitted during the public comment period.”
I.C. 4-22-2-29(b).

The fourth rulemaking procedure is the submission of the rule to attorney general. After the agency adopts a rule, it is
required to submit it in proper form and with a full text of any material incorporated into it by reference to the Indiana attorney
general for approval. I.C. 4-22-2-31(a) and I.C. 4-22-2-20, "Form of Submission of Rules" and I.C. 4-22-2-21 “Incorporation
By Reference”. The attorney general specifies the number of copies to be submitted. I.C. 4-22-2-31(b). The attorney general must review each rule for legality. Further, during the review the attorney general is to consider the following:

1. The extent to which all persons affected by the adopted rule should have understood from the published rule or rules that their interests would be affected;

2. The extent to which the subject matter of the adopted rule or the issues determined in the adopted rule are different from the subject matter or issues that were involved in the published rule or rules.

3. The extent to which the effects of the adopted rule differ from the effects that would have occurred if the published rule or rules had been adopted instead. I.C. 4-22-2-32 (a)-(b).

The Indiana attorney general can then disapprove a rule only if it was adopted without statutory authority, has been adopted without complying with the mandated procedures, or it violates another law. I.C. 4-22-2-32(c). The attorney general has forty-five days from the date a rule is submitted to him to act on it. If he fails to approve or disapprove the rule, it is deemed approved. The agency can then submit it to the governor for approval without an express approval by the attorney general. See I.C. 4-22-2-32(d).

The fifth rulemaking procedure is the submission of the rule to the governor. After a rule has been approved, the agency must submit the rule to the governor for his approval. I.C. 4-22-2-33(a). He may approve or disapprove the rule with or without cause. I.C. 4-22-2-34(a). The governor has fifteen days from the date of submission to act, but he can take thirty days if he files a statement with the Indiana secretary of state within the first fifteen days stating that he intends to take an additional fifteen days. If the governor neither approves nor disapproves the rule within the allowed period, the rule is deemed approved. See I.C. 4-22-2-34(b).

The sixth rule making procedure is the submission of the rule to the secretary of state. Upon approval or deemed approval by the governor, the agency must immediately submit the rule to the secretary of state for filing. I.C. 4-22-2-35(a). The Indiana secretary of state may accept such rule for filing according to I.C. 4-22-2-39 only if:

1. a sufficient number of duplicate original copies are submitted to allow him to comply with I.C. 4-22-7-4, which specifies that the agency must maintain a duplicate original copy of each rule that has been filed with the secretary of state.

2. Each submitted copy includes a reference to the document control number assigned to the rule by the publisher.

3. Each submitted copy either indicates that the agency as conducted its rulemaking in conformity with all procedures required by law or has been approved by the attorney general and indicates that the procedures required after his
approval have been properly carried out. I.C. 4-22-2-39(a).

If a rule contains a statement that the rule is not effective until the Indiana state agency has "complied with requirements established by the federal or state government," until a "specific period of time has elapsed," or until a "date has occurred," the Indiana state agency has complied with three conditions in I.C. 4-22-2-39(a) even if the described event or time has not yet occurred when the Indiana secretary of state reviews the rule. I.C. 4-22-2-39(b). The Indiana secretary of state can take no more then three business days to make this review of the rule. I.C. 4-22-2-39(c).

After such review, the secretary of state accepts the rule for filing and file stamps and indicates the date and time the rule is accepted on every duplicate original submitted. I.C. 4-22-2-35(c). A rule that has been accepted for filing by the secretary of state becomes effective on the latest of the following dates:

(1) The effective date of the statute delegating authority to the Indiana state agency to adopt the rule,
(2) The date that is thirty days from the date and time that the rule was accepted for filing,
(3) The effective date stated in the rule, or
(4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule. I.C. 4-22-2-36.

Any rule making action that does not conform to the requirements of the Indiana Administrative Adjudication Act is invalid; and any resulting rule does not have the effect of law until it is adopted in conformity with the Indiana Administrative Adjudication Act. I.C. 4-22-2-44.

Any rulemaking action, other than final adoption of a rule, can be done by the individual or group with statutory authority to adopt rules for the agency, a member of the state agency's staff, or another agent of the agency. However, final adoption (or readoption) of a rule can be performed only by those granted statutory authority to adopt rules for the agency. I.C. 4-22-2-15.

There is a so-called Indiana "open door law," which states that, when the governing body (including the board and any committee appointed by it) of an agency, department or commission performs an "official action", it must comply with the Indiana "open door law," which is codified at IC 5-14-1.5-1 to -8. I.C. 4-22-2-16. "Official action" means to:

(1) receive information;
(2) deliberate
(3) make recommendations;
(4) establish policy;
(5) make decisions; or
In general the Indiana "open door act" requires open meetings. I.C. 5-14-1.5-3. This means the posting notice of a meeting, that meeting’s agenda and the making of a memorandum of the meeting. I.C. 5-14-1.5-4 to -5.

The state agency must provide public access to the text of a rule from the time it notifies the public of its intent to adopt it or the time it adopts it, whichever is earlier. See I.C. 4-22-2-17(a). What constitutes adequate public access is specified in I.C. 5-14-3-1 to -10. Access must also be provided to the full text of any matter incorporated by reference into a proposed or adopted rule. See I.C. 4-22-2-17(b).

If more than one Indiana state agency is directed by statute to adopt the same rule, a joint notice of the public hearing may be published and a joint hearing held. Each agency, must, however, separately draft and adopt a rule. I.C. 4-22-2-18(a). If an agency is authorized to adopt a rule and another agency must approve it, only the agency authorized to adopt the rule must comply with chapter 2 of the Indiana Administrative Adjudication Act. I.C. 4-22-2-18(b).

An Indiana state agency may conduct any part of its rule making activity before the time that the statute authorizing the rule becomes effective if the Indiana state agency will have statutory authority to adopt a rule at the time that the rule becomes effective. I.C. 4-22-2-19(b).

Any rule submitted to the publisher, attorney general, the governor, or the secretary of state must be a written document that is "clear, concise, and easy to interpret and apply" and uses the format, numbering system, standards, and techniques established by the publisher and code revision committee under I.C. 4-22-2-42.

If incorporation of the full text would be cumbersome, expensive, or otherwise inexpedient, an agency may incorporate by reference into a rule . . . : (1) A federal or state statute, rule, or regulation. (2) A code, manual, or other standard adopted by an agent of the United States, a state, or a nationally recognized organization or association. I.C. 4-22-2-21(a).

The incorporated matter must be “fully and exactly described.” I.C. 4-22-2-21(b). However, the full text of the incorporated matter must be submitted with the rule to the attorney general, the governor, or the secretary of state unless it is an Indiana statute or rule, a form or instructions for a form numbered by the commission on public records, the source of a statement that is quoted or paraphrased in full in the rule, or any matter that has been filed with the secretary of state before the date that the rule with the incorporation is filed. I.C. 4-22-2-21(c).

At any time, an agency can solicit comments from the public on the need for a rule, the drafting of a rule, or any other subject related to rulemaking action. Its procedures may include the holding of conferences and the inviting of written facts, arguments, views, or suggestions. I.C. 4-22-2-23. Consideration of such comments is not necessary to the validity of a rule later
Abbreviated procedures to be used by the agencies for the adoption of certain nonsubstantive rules are set forth in Section 38 of chapter 2. These include rules to bring it in line with the publisher's format, to amend another rule to replace inaccurate reference to another statute, rule, or regulation, or to correct typographical, clerical, or spelling errors in another rule. I.C. 4-22-2-38(a). The section also provides that the governor or the attorney general may file an objection with the secretary of state to a rule adopted under these procedures within forty-five days after the rule is accepted for filing. Such an objection has the effect of invalidating the rule. I.C. 4-22-2-38(h).

An agency may recall a rule at any time before it is accepted for filing by the secretary of state. I.C. 4-22-2-40(a). A notice of the recall must be distributed to the publisher for publication in the Indiana Register. I.C. 4-22-2-40(b). After recall, the agency may reconsider its adoption and adopt an identical or revised rule so long as it does not substantially differ from the published rule. I.C. 4-22-2-40(c). The recall of the rule voids any approval by the Indiana attorney general or the governor of the state of Indiana given after the rule was adopted and before its recall. I.C. 4-22-2-40(d). The readopted version of the rule must be submitted to the attorney general and governor for approval, and the governor and attorney general have the full statutory period to approve or disapprove the readopted rule. I.C. 4-22-2-40(c). The readopted rule is then effective only after it is submitted to the secretary of state and accepted for filing. I.C. 4-22-2-40(f).

At any time before acceptance for filing, an agency which had adopted a rule may withdraw its rule. I.C. 4-22-2-41(a). It must distribute a notice of withdrawal to the publisher for publication in the Indiana Register. I.C. 4-22-2-41(b). Withdrawal of a rule terminates the rulemaking action; and, the withdrawn rule can become effective only through a new rule making action. I.C. 4-22-2-41(c).

The attorney general may adopt rules to interpret or implement the rule making provisions of the Indiana Administrative Adjudication Act. I.C. 4-22-2-43(a). In addition, Indiana state agencies are empowered to adopt rules to supplement the Indiana Administrative Adjudication Act procedures for their own rulemaking action. I.C. 4-22-2-43(b).

The Indiana Department of State Revenue is granted specific statutory power to adopt rules and regulations governing the following:

(1) the administration, collection, and enforcement of "listed taxes" as defined by I.C. S6-8.1-1-1;

(2) the interpretation of statutes governing the listed taxes;

(3) the procedures relating to the listed taxes; and

(4) the methods of valuing the items subject to the listed taxes. I. C. 6-8.1-3-3.
The scope of this rulemaking authority has been defined, in some areas, by judicial decision. In *Gross Income Tax Division v. Crown Development Co.*, 109 N.E.2d 426, 431, (1952), the Indiana Supreme Court held that only the state legislature can say what may be an income subject to the gross income tax. In addition, the department does not have power to broaden the tax base established by the gross income tax statute by administrative regulations. See *Department of Treasury of Indiana v. Intern’l Harvester Co.*, 47 N.E.2d 150, 152, (1943), *aff’d* 322 U.S. 340 (1944).

The Indiana state board of tax commissioners is established by I.C. 6-1.1-30-1. It specifies that the Indiana state board of tax commissioners shall have three members, all appointed by the governor, with one member designated to serve as chairman during his term of appointment. No more than two of the board members may belong to the same political party. Each member serves a term of four years. When a member is appointed to fill a vacancy, however, he serves for the unexpired term of his predecessor. Any two members of the Indiana state board of tax commissioners constitute a quorum for the transaction of business. I.C. 6-1.1-30-1.

The Indiana Code mandates that the state board of tax commissioners prescribe property tax forms and returns that taxpayers are to complete and upon which assessments will be based. Further, the board shall prescribe the forms that give taxpayers notice of assessment actions, and adopt rules and regulations concerning the assessment of tangible property. The board must also develop specifications that prescribe state requirements for computer software to be used by counties for assessment purposes. I.C. 6-1.1-31-1(a). In addition, the Indiana state board of tax commissioners may adopt rules which are related to its own duties or procedures. I.C. 6-1.1-31-1(b).

The Indiana unemployment insurance board is established by I.C. 22-4-18-2. This board consists of nine members appointed by the governor. Four of the members are representatives of labor and its interests; one represents the state and the interests of the state and the public at large; two represent large employers of the state of Indiana; and two represent independent merchants and small employers. All appointments to the Indiana employment security board are for four year terms ending on March 31. I.C. 22-4-18-2(a). Each board member must take an oath of office and serves until his successor is appointed and qualified. The governor is empowered to appoint a member for the unexpired term when a vacancy occurs on the board, and he may remove any board member for misconduct, incapacity, or neglect of duty. I.C. 22-4-18-2(b).

The Indiana employment security board is required to hold one meeting each month and may hold additional meetings as deemed necessary. Five members of the board constitute a quorum for the transaction of business. See I.C. 22-4-18-2(c).

By general statutory grant, the unemployment insurance board is given the power and authority to adopt, amend, or rescind such rules and regulations as it may seem necessary or suitable for the proper administration of the agency. I.C. 22-4-19-
1. Such rules and regulations have the force and effect of law; and, it is up to the board to prescribe the extent, if any, of the retroactive effect to be given any rule issued. I.C. 22-4-19-1. The purpose of the agency is to secure to the state of Indiana and its employers and employees all the rights and benefits which are conferred under the provisions of the Social Security Act that relate to unemployment compensation, the Federal Unemployment Tax Act, the Wagner-Perper Act, and the Federal State Extended Unemployment Compensation Act of 1970. I.C. 22-4-37-1. Given this purpose, the board is empowered to adopt rules to effectuate it. I.C. 22-4-37-1. The General Assembly has also made specific grants of rulemaking authority to the board. These include the authority to do the following:

(1) To prescribe procedures for the making of claims for benefits. The Indiana employment security board is required to prescribe procedures designed to expedite the taking of such claims in instances of mass layoffs by employers. See I.C. 22-4-17-1(a);

(2) To prescribe procedures for the issuance of unemployment compensation warrants from the local office. I.C. 22-4-14-2;

(3) To designate agencies to disburse unemployment benefits and prescribe the times and manner for so doing, including regulations to provide for the payment of benefits due and payable to deceased persons to their legal representative or next of kin. I.C. 22-4-12-1.

(4) To employ a liability referee to act to settle employer division disputes over contributions owed and prescribe the rules of procedure and practice to govern such dispute-resolution proceedings. See I.C. 22-4-32-2 to -3; and

(5) To prescribe fair and reasonable regulations pursuant to which the normal interest on delinquent contributions shall not accrue. See I.C. 22-4-29-1(a).

As noted earlier, the unemployment insurance board is not subject to the procedural requirements of the Indiana Administrative Adjudication Act. Instead, specific statutes set forth the rulemaking procedures for the adoption of an amendment, or the recission of rules which apply to all or classes of employment, employing units, employees or other persons or agencies.

The board is responsible for seeing that its rules and regulations are printed and made available for distribution to the public. Upon the application of any person, it is required to furnish a copy of its rules. I.C. 22-4-19-3. In addition, each employer of the state is required to display and maintain posters concerning the Indiana employment security division's regulations in a place readily accessible to all employees. An employer must also make printed benefit rights information available to each employee at the time he becomes unemployed; and the Indiana employment security board must furnish such printed information
to employers. I.C.22-4-17-1.