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2012 Indiana state tax legislative changes include credit extensions, filing deadline modifications, creation of sales tax exceptions, and property tax administration changes

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Indiana's 2012 legislative session adjourned in March, ending a session that involved several tax changes impacting Indiana's income tax, sales & use tax, utility receipts tax, property tax, and inheritance tax. We summarize some of Indiana's 2012 state tax developments below.

Income Tax

- There was no Internal Revenue Code update passed during this legislative session. Indiana still conforms to the Internal Revenue Code as in effect on January 1, 2011 along with all of the numerous decoupling provisions passed in recent years. HB 1072 did make technical corrections to both IC 6-3-1-3.5 and IC 6-3-1-11 to correct certain citations to the Internal Revenue Code and to correct for inconsistent amendments to those statutes provided in more than one bill in the last legislative session. ([HB 1072](#) Sec. 52 and Sec. 53, effective July 1, 2012)



- Trusts and estates will not be required to file a fiduciary tax return if the Indiana sourced gross receipts of the entity are less than \$600. This corresponds to federal requirements for trusts and estates contained in IRC § 6012(a). ([HB 1072](#) Sec. 54, effective January 1, 2013)
- Employers with \$1,000 or less of annual withholding may file their withholding returns annually. All other employers must file monthly. (Note that the statutory language could be read as applying the \$1,000 limit on a monthly basis, but the Department has stated in its legislative summary that it will apply the limit on an annual basis.) Quarterly and semi-annual filing will no longer be allowed. Combined withholding and sales and use tax returns will no longer be allowed. All withholding returns must be filed electronically through the Department's online filing system. ([HB 1072](#) Sec. 55 and 56, effective January 1, 2013)
- Partnerships that make periodic withholding payments for nonresident partners must report the amount withheld by the fifteenth day of the third month after the end of the tax year. Prior law required reporting within 30 days of the end of the tax year. If the withholding payment is made only annually for a nonresident partner, such withholding is due by the fifteenth day of the fourth month after the end of the tax year instead of the previous requirement of within 30 days of the end of the tax year. (The Department had historically allowed an automatic extension for filing by the fifteenth day of the third month.) If the withholding payment is made only annually for a nonresident shareholder of a S corporation, such withholding is due by the fifteenth day of the fourth month after the end of the tax year instead of the previous requirement of by the fifteenth day of the third month after the end of the tax year. This will generally make nonresident partner and nonresident shareholder withholding due on April 15. ([HB1072](#) Sec. 57 and 58, effective July 1, 2012)
- If a person is required to file more than 25 W-2G, 1099-R, or WH-18 statements in a year, the person is required to file the statements in an electronic format as determined by the Department. ([HB1072](#) Sec. 59, effective July 1, 2012)
- The Venture Capital Investment Tax Credit, the Hoosier Business Investment Tax Credit, the Alternative Fuel Vehicle Manufacturing Tax Credit, and the New Employer Tax Credit have all been extended until December 31, 2016. ([HB1072](#) Sec. 60, 61, 62 and 63, effective July 1, 2012)

Sales & Use Tax

- The statute of limitation for filing a refund for sales tax paid on utility services used in manufacturing is extended from 18 months to 36 months from the date that the transaction occurred. ([HB 1072](#) Sec. 47 and 109, effective July 1, 2012)
- Utility services that are predominately used in processing, repairing, recycling, floriculture, or arboriculture are excluded, i.e. exempt, from the imposition of sales tax. This provision makes the predominate use exclusion under IC 6-2.5-4-5 generally consistent with the pro rata exemption allowed under IC 6-2.5-5-

5.2 ([HB 1072](#) Sec. 46, effective January 1, 2013, except with regard to recycling, which is effective January 1, 2012)

- The sale of wrapping material and empty containers is exempt from the sales tax if the materials are purchased by an industrial processor to be used as nonreturnable packaging in the shipment or delivery of goods that are owned by another person. ([HB 1072](#) Sec. 48, effective July 1, 2012)
- Equipment purchased by recyclers is exempt from the sales tax if the equipment is required by local, state, or federal regulations and is used to provide increased environmental quality. ([HB 1072](#) Sec. 49, effective January 1, 2012)
- Machinery, tools, and equipment are exempt from the sales tax if the person acquiring the property acquires it for direct use in direct processing of recycling materials and the person is occupationally engaged in recycling. Materials consumed in the processing of recycling materials or that become a part of the product produced by the processing of recycling materials are exempt from the sales tax. ([HB 1072](#) Sec. 50, effective January 1, 2012)
- An aircraft purchase is exempt from the sales tax if the purchaser is a nonresident and the purchaser transports the aircraft to a destination outside Indiana within 30 days after completion work or a repurchase evaluation is completed. Completion work is defined as the addition of tangible personal property to or reconfiguration of the interior of an aircraft, if the work requires the issuance of an airworthiness certificate from the Federal Aviation Administration. ([HB 1325](#) Sec. 1 and 3, effective January 1, 2009)
- Materials, parts, equipment, and engines used, consumed, or installed in the repair, maintenance, refurbishment, remodeling, or remanufacturing of an aircraft or an avionics system of an aircraft are exempt from sales tax if the aircraft is registered in a country outside the United States and has a minimum landing weight of at least 5,000 pounds or is equipped with a turboprop or turbojet power plant. The exemption applies only if the retail merchant possesses a valid repair station certificate issued by the Federal Aviation Administration. ([HB 1325](#) Sec. 5, effective July 1, 2012)
- The exemption for the provision of utility services under the Low Income Home Energy Assistance Program is repealed. ([HB 1072](#) Sec. 2, effective January 1, 2012)
- The sales tax deduction for retail merchants selling E85 fuel is repealed. ([HB 1128](#) Sec. 1, effective July 1, 2012)

Utility Receipts Tax

- Gross receipts from an electricity supplier as payment of severance damages or other compensation resulting from a change in assigned service area boundaries are exempt from utility receipts tax. ([HB 1072](#) Sec. 45, effective January 1, 2013)

Property Tax

- Before July 1, 2013, and before July 1 of every fourth year thereafter, the county assessor in each county shall prepare and submit to the Department of Local Government Finance a reassessment plan for the county. Beginning July 1, 2014 with a completion date of March 1, 2015, Indiana counties must reassess at least one-quarter of all real properties every year, with 100 percent of all real property reassessed by the end of the four-year reassessment cycle. ([SB 19](#) Sec. 2, effective July 1, 2012)
- A taxpayer wishing to use the income capitalization method or the gross rent multiplier method in the initial assessment of its property must submit the necessary information to the assessor by March 1. However, a taxpayer that does not provide such data by March 1 shall not be prejudiced in any way and is not restricted from pursuing an appeal. ([HB 1195](#) Sec. 2, effective July 1, 2012)
- Imposes penalties regarding proceedings before the Property Tax Assessment Board of Appeals ("PTABOA"). A \$50 penalty is assessed against the taxpayer if: (1) a taxpayer's request for continuance is denied; (2) the taxpayer, or the taxpayer's representative, does not appear at a hearing; or (3) the taxpayer's request for continuance, request for the PTABOA to take action without the taxpayer present, or withdrawal is not filed in a timely manner. ([HB 1195](#) Sec. 4, effective July 1, 2012)
- The interest that a taxpayer would otherwise be entitled to as a result of a decrease in an assessment having been made by either the Board of Tax Review or Tax Court shall be reduced by the greater of \$500 or 20% of the interest to which the taxpayer would otherwise be entitled to unless the taxpayer can demonstrate that substantive evidence supporting its position was presented to the county assessor before, or at, the PTABOA hearing. ([HB 1195](#) Sec. 7, effective July 1, 2012)
- For any proceeding pending or commenced after June 30, 2012, with respect to appeals concerning residential property, including any review by the Board of Tax Review or the Tax Court, a taxpayer or an assessing official may introduce as evidence the assessments of comparable properties located in the same taxing district or within two (2) miles of a boundary of the taxing district. For non-residential property, evidence of any relevant, comparable property may be introduced; however, preference shall be given to comparables within the same taxing district or within two (2) miles of a boundary of the taxing district. ([HB 1195](#) Sec.5, effective July 1, 2012)

Inheritance Tax

- A credit is allowed against the amount of inheritance tax due for deaths that occur after December 31, 2012. The credit is 10% in 2013 and increases by 10% per year through 2021 when the tax is phased out. ([SB 293](#) Sec. 9, effective July 1, 2012.)

Administrative Provisions

- The limitation of the jurisdiction of the Indiana Tax Court over a claim for refund to three years from the date of filing has been removed. Indiana Tax

Court jurisdiction over a claim for refund begins either: (1) 180 days after a refund claim has been filed, or (2) after the Department issues an order denying the refund for up to 90 days after the Department issues the order denying refund. There is no longer a limitation on jurisdiction if the Department fails to either grant or deny a refund. ([HB 1072](#) Sec. 109, effective July 1, 2012)

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