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# STATE OF INDIANA

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DEPARTMENT OF LOCAL GOVERNMENT FINANCE



INDIANA GOVERNMENT CENTER NORTH  
100 NORTH SENATE AVENUE N1058(B)  
INDIANAPOLIS, IN 46204  
PHONE (317) 232-3777  
FAX (317) 974-1629

**TO: All Political Subdivisions**

**FROM: Wesley R. Bennett, Commissioner**

**RE: Supplemental Memo on Executive Order #20-005 – Cash Flow Solutions**

**DATE: March 30, 2020**

This memorandum supplements the Department of Local Government Finance’s (“Department”) memorandum issued on March 20, 2020, on the waiver of penalties for delinquent property tax payments. As discussed in that memorandum, Executive Order #20-005 waives penalties on property taxes paid during the sixty (60) day period after May 11, 2020. Hence, taxpayers are given a sixty (60) day reprieve from paying property taxes without penalty, which may result in cash flow issues for local units. The memorandum also briefly mentioned some options units can explore to address those issues.

The Department provides this memorandum to describe the options for local units to evaluate and determine if there are any cash flow problems from tax payments that do not come until after the June settlement. The local unit is advised to consult with a financial advisor or local counsel as to the viability of pursuing any of these options.

## **Programs through Indiana Bond Bank**

The Indiana Bond Bank offers an Advanced Funding Program designed to assist local units with cash flow. Information can be found on the Indiana Bond Bank website:

<https://inbondbank.com/advance-funding-program/>

Through this program, the Indiana Bond Bank offers short term advances on funding at or below market interest rates, with no up-front costs. The Bond Bank also offers assistance with filling out the advance funding application and determining the amount the unit is eligible to borrow. This program operates through the making of tax anticipation warrants and temporary loans, which are described in greater detail later in this memorandum.

The Bond Bank also has an Interim Loan Program which provides access to short-term funding in anticipation of long-term financing. Information can be found on the Indiana Bond Bank website:

<https://inbondbank.com/interim-loan-program/>

For further information about the Advanced Funding Program or the Interim Funding Program, contact [bondbank@inbondbank.com](mailto:bondbank@inbondbank.com) or 317-233-0888.

### **Advance of Portion of June Settlement, IC 5-13-6-3**

Advances from the county treasurer for up to 95% of the amount to be received in the next settlement period, under IC 5-13-6-3.

The proper officer of a unit may file a written request for an advance with the county treasurer. Within thirty (30) days of receiving the written request, the county treasurer shall provide to the county auditor the amount available for distribution in the upcoming settlement period. The county auditor must advance to the unit making the request a portion of the settlement amount. The advance may not be more than 95% of the amount collected at the time of the advance or 95% of the settlement amount to be distributed to the unit, whichever is less. The county auditor will deduct the advance from the total amount due to the unit at the next settlement distribution.

### **Tax Anticipation Warrants & Loans in Anticipation of Expected Revenues**

A local unit may make temporary loans to meet current running expenses in anticipation of revenues for the current fiscal year. The rules for issuing these loans will vary by unit. Generally, tax warrants should be competitively bid, and payments will be due no later than the end of the year. Below are the statutory elements required for each unit to make a tax anticipation warrant. The unit should work with bond counsel or a financial advisor on the procedures involved and evaluate the costs and benefits of making a tax anticipation warrant compared to other alternatives.

For cities and towns, the legislative body may, by ordinance, make a loan for a term not to exceed five (5) years. The ordinance must comply with the requirements of issuing a loan under IC 36-4-6-19 (for cities) or IC 36-5-2-11(b) & (c) (for towns), except for the following:

- (1) The ordinance must pledge to the payment of the loan with a sufficient amount of tax revenues over the ensuing five (5) years and to provide for refunding the loans.
- (2) The loans must be evidenced by notes of the city in terms designating the nature of the consideration, the time and place payable, and the revenues in anticipation of which they are issued and out of which they are payable.

IC 36-4-6-20(b); IC 36-5-2-12

For counties, the county council's ordinance authorizing the temporary loan in anticipation of revenues must include the following information required by IC 36-2-6-18(c):

- (1) Total amount of the issue.
- (2) Denomination of the warrants.
- (3) Time and place payable.
- (4) Rate of interest.
- (5) Funds and revenues in anticipation of which the warrants are issued and out of which they are payable.
- (6) An appropriation and pledge that a sufficient amount of the anticipated revenues will go to the punctual payment of the warrants.

A tax anticipation warrant for a county is exempt from taxation.

For school corporations, the board of trustees must make a finding that an emergency exists to authorize the borrowing. The following rules apply to school corporation anticipation warrants:

- (1) If a warrant exceeds \$20,000, the issuance must be advertised for sale, bids received, and an award made by the board of trustees as necessary for the sale of bonds. Publication of the notice, however, is not necessary outside the county or more than ten (10) days before the date of the sale.
- (2) The principal of a warrant must be paid from the fund for which the anticipated taxes are levied.
  - Interest on the warrant may be paid from the debt service fund or the operations fund.
  - In the case of anticipated state tuition support distributions, the principal on the warrant must, and the interest may be paid from the education fund.
- (3) The amount of the principal may not exceed 80% of the amount of taxes or revenues estimated to be distributed to the applicable fund at the time of the next semiannual settlement.
- (4) Once the warrant has been issued, the warrant may not be delivered to the purchaser and payment may not be made on the warrant before January 1 of the year the loan is to be repaid.

IC 20-48-1-9

For townships, the township board must adopt a resolution declaring that an emergency exists that requires the borrowing of money to meet the township's current expenses. The amount of the temporary loan may not be more than 80% of the township's anticipated revenues for the remainder of the year in which the loans are taken out. The township board's resolution must include the following information:

- (1) The nature of the consideration of the loan.
- (2) The time the loans are payable.
- (3) The place the loans are payable.
- (4) The rate of interest.
- (5) The anticipated revenues on which the loans are based and out of which they are payable.
- (6) An appropriation of the sufficient amount of the anticipated revenues on which the loan is based and out of which they are payable for the payment of the loan.

The loan must also be evidenced by time warrants stating the following:

- (1) The nature of the consideration.
- (2) The time and place payable.
- (3) The anticipated revenues on which they are based and out of which they are payable.

IC 36-6-6-15

For public libraries, the library board may adopt a resolution authorizing a loan for a term not to exceed five (5) years. The resolution must appropriate and pledge to the payment of the loans a sufficient amount of the anticipated revenues on which the loans are based and out of which they are payable for the payment of the loan. The loan must also be evidenced by time warrants stating the following:

- (1) The nature of the consideration.
- (2) The time and place payable.
- (3) The anticipated revenues on which they are based and out of which they are payable.

IC 36-12-3-10

For airport authorities, the authority board must adopt an ordinance and evidenced by warrants that must state the following:

- (1) Total amount of the issue.
- (2) Denomination of the warrants.
- (3) Time and place payable.
- (4) Rate of interest.
- (5) Funds and revenues in anticipation of which the warrants are issued and out of which they are payable.
- (6) A reference to the ordinance authorizing the warrant and the date of its adoption.
- (7) An appropriation of the sufficient amount of the anticipated revenues on which the loan is based and out of which they are payable for the payment of the loan.

IC 8-22-3-19(a)

### **Emergency Loans**

Some local units may make loans upon a finding that an emergency exists that requires the expenditure of money not included in the unit's existing budget and tax levy. As with tax anticipation warrants, the rules for issuing these loans will vary by unit.

For school corporations, the board of trustees must adopt a resolution declaring an emergency and authorizing an emergency loan. The emergency loan may be evidenced by the issuance of the school corporation's note under the same procedures and restrictions and issuance of bonds, except as to purpose. At the time the board of trustees make the next annual budget and tax levy for the school corporation, the board must levy to the credit of the fund for which the expenditure is made sufficient to pay the loan and the interest on the loan. Interest on the loan may be paid from the debt service fund. (IC 20-48-1-7)

Townships may also make emergency loans if the township board finds a need for fire and emergency services or that some other emergency exists, after consideration of several factors outlined in statute. The township board must issue a special order, entered and signed on the record, authorizing the trustee to borrow money sufficient to meet the emergency. A township cannot take an emergency fire loan more than three (3) years during a five (5) year period. Please note that a township emergency fire loan is subject to taxpayer remonstrance and hearing under IC 36-6-6-14.5. (IC 36-6-6-14)

For cities, the common council may adopt an ordinance to make a loan of money and issue a bond to refund the loan. The loan is subject to the management and supervision of the city fiscal officer. (IC 36-4-6-19)

Neither a county nor a town may not issue bonds to pay for current expenses. (IC 36-2-6-18(a)(1); IC 36-5-2-11(a))

### **Note on Debt Payments**

Local units may have to divert funds from existing sources, including a debt service fund, to provide for needs related to the COVID-19 emergency. As such, this may have a negative impact on the ability of the unit to pay for its pre-existing debt service obligations. The Department encourages units to work with their financial advisors on options, but also makes the following recommendations:

- Units that have accumulated an operating balance in its debt service fund pursuant to IC 6-1.1-17-22 should use that balance as much as possible to ensure debt payments due this year are met.

### **Note on Township Assistance Claims**

A township that, because of an increase in the number of claims for township assistance, has exhausted or come close to exhausting its township assistance fund has the following options.

### **Township Borrowing (IC 12-20-24)**

If any of the general cash flow solutions outlined above are unavailable, townships also have the ability to apply for any of the township assistance solutions outlined below.

Indiana Code 12-20-24 allows a township to borrow money on a short term basis to pay for township assistance claims. The township must take the following steps:

- (1) The trustee must determine that the township assistance fund will be exhausted before the end of the fiscal year (January 1 to December 31).
- (2) The trustee notified the township board of that decision.
- (3) The township board adopts a resolution requesting the Department grant the right for the township to borrow money on a short term basis to fund township assistance services.

The appeal must do the following:

- Show that the amount of money contained in the township assistance fund will not be sufficient to fund services required to be provided within the township.
- Show the amount of money that the board estimates will be needed to fund the deficit.
- Indicate a period, not to exceed five (5) years, during which the township would repay the loan.

IC 12-20-24-1

Upon receiving the request, the Department will determine whether the township should be allowed to borrow money. The Department may not approve the borrowing unless it determines the township assistance fund will be exhausted before the fund can provide for all township obligations incurred. The Department also may not recommend or approve a loan that will exceed the estimated amount of the deficit. (IC 12-20-24-5, 7)

If the Department approves the borrowing, the Department shall:

- (1) order the township trustee to borrow the money from a financial institution on behalf of the township board and deposit the money borrowed in the township's township assistance fund; and
- (2) determine the period during which the township shall repay the loan, not to exceed five (5) years.

IC 12-20-24-6

To pay for the borrowing, the township board shall levy an amount sufficient to pay the principal and interest due on the loan for each year.

- (1) For an appeal submitted to the Department before August 1 and approved before November 1, the levy must begin in the following year and continuing for the term of the loan.
- (2) For an appeal submitted to the Department after August 1, the levy may first be imposed in the next succeeding year.

IC 12-20-24-8

In other words, for an appeal to borrow money, if the request comes to the Department prior to August 1, 2020, the levy to repay the loan must be first imposed for the 2021 taxes. If the request comes after August 1, the levy to repay the loan may be first imposed for the 2022 taxes.

The township board must make an additional appropriation before the borrowed money may be spent. (IC 12-20-24-9)

### **County Borrowing on Behalf of Township, IC 12-20-20-2**

Indiana Code 12-20-20-2(b) & (c) allow a township to borrow money, though the borrowing is actually performed by the county. The county board of commissioners must determine to borrow money or otherwise provide the money. The county council must then promptly pass necessary ordinances and make necessary appropriations to enable the borrowing or provision to be done by any of the following:

- (1) A temporary loan against taxes levied and in the process of collection;
- (2) The sale of county township assistance bonds or other county obligations; or
- (3) Any other lawful method of obtaining money for the payment of township assistance claims.

If the county issues a note for the purpose of paying township assistance claims, the county auditor shall transfer to the county general fund the balance of money remaining after all the notes and interest are paid. IC 12-20-26.

The township may pursue this option whether or not it had previously requested the Department to approve it borrowing money.

The Department emphasizes that the township cannot levy a property tax in 2021 to repay a loan for township assistance unless the township submits a request to the Department after July 31, 2020. The township board and trustee will need to take that into account before evaluating whether a request should be made.