

**MEMORANDUM OF UNDERSTANDING AND AGREEMENT
ASSOCIATION OF INDIANA COUNTIES TAX REFUND EXCHANGE AND COMPLIANCE
SYSTEM**

This **MEMORANDUM OF UNDERSTANDING AND AGREEMENT** ("Agreement") is entered into this ___ day of _____, 2021, by and between the Governing Body of the Unit of Local Government of _____ ("Claimant Agency") and the Association of Indiana Counties, Inc., acting as the Indiana Local Government Debt Setoff Clearinghouse ("Clearinghouse").

RECITALS

WHEREAS, the Indiana Code IC 6-8.1-9.5, (the "Code"), authorizes the Indiana Department of Revenue ("Department") and claimant agencies (as defined in the Code) to cooperate in identifying debtors (as defined in the Code) and obtaining the setoff of tax refunds to satisfy, in whole or in part, a debt (as defined in the Code) owed to a Claimant Agency; and

WHEREAS, the Code establishes a procedure by which an Indiana nonprofit that represents units of local government exclusively in Indiana may establish a clearinghouse to: (i) compile and consolidate debts owed to claimant agencies in a format that is consistent with the Department's requirements for the setoff of tax refunds under the Code; (ii) act as an intermediary on behalf of a Claimant Agency with respect to the Department for purposes of the Code; and (iii) submit an application for the setoff of tax refunds with the Department on behalf of a Claimant Agency under the Code; and

WHEREAS, the Code provides that the Department may enter into a contract with the Clearinghouse to establish the debt setoff program under the Code (the "Program"); and

WHEREAS, pursuant to the Code, the Clearinghouse has registered with Department to submit delinquent debts on behalf of a local agency and has thereby become authorized to submit delinquent debts on behalf of claimant agencies under the Code; and

WHEREAS, Claimant Agency is a local unit of government authorized to submit a debt owed to it to the Clearinghouse pursuant to the Code; and

WHEREAS, Claimant Agency desires to enter into this Agreement with Clearinghouse in order to participate in the Program in order to increase the collection rate of debts owed to Claimant Agency; and

WHEREAS, Clearinghouse has agreed to submit debts on behalf of Claimant Agency pursuant to the Program:

NOW THEREFORE, in consideration of the mutual covenants and agreements, terms and conditions contained herein, Claimant Agency and Clearinghouse mutually agree as follows:

I. TERM/TERMINATION. The Code authorizes Department and Clearinghouse to implement the Program effective as of January 1, 2018. This Agreement shall become a legally binding agreement between Claimant Agency and Clearinghouse. This Agreement shall remain and continue in full force and effect from year to year unless modified or terminated in writing by either party upon ninety (90) days written notice to the other party. Upon termination of this Agreement all sums due and owing from either party to the other shall remain a lawful obligation of the party and be due and payable. Clearinghouse will erase all claimant data files from its debt setoff system upon termination.

II. REPRESENTATIONS AND OBLIGATIONS OF CLAIMANT AGENCY

- A. Claimant Agency hereby designates, appoints, and authorizes Clearinghouse to process delinquent debts to be submitted to Department. For purposes of the Program, "Delinquent Debt" means:
- (i) a single account or monetary obligation which is at least twenty-five dollars (\$25.00) owed by a debtor to a Claimant Agency; or,
 - (ii) any group of accounts or monetary obligations, that, when combined, total at least twenty-five dollars (\$25.00), owed by the same debtor to a Claimant Agency.

Each account or monetary obligation may have accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for the sum.

- B. Claimant Agency shall comply with any and all applicable provisions of Indiana Code prior to the submission of a debt to Clearinghouse for setoff.
- C. Claimant Agency shall, upon execution of this Agreement, file a participation form with Clearinghouse designating a debt setoff coordinator and a debt setoff contact. Such participation form shall be updated on an annual basis and at any time there is a change in the information provided thereon. Clearinghouse shall administratively provide participation forms, as needed, for use by Claimant Agency. The debt setoff coordinator shall be the designated local government employee authorized to receive notices and communication from Clearinghouse to insure that the requirements of this Agreement and the requirements of the Code are met. The debt setoff coordinator shall supply Clearinghouse with any and all information that in the opinion of Clearinghouse is necessary for the proper implementation of this Agreement. The debt setoff contact will receive all referrals from debtors.
- D. Claimant Agency shall use a file format specified by Clearinghouse to prepare debt files and adjustments to debt files that Claimant Agency certifies to Clearinghouse are owed to Claimant Agency and that Claimant Agency desires to have Clearinghouse submit to Department. The Clearinghouse shall timely notify the Claimant Agency of any changes to the file format and the Claimant Agency covenants and agrees that it shall immediately implement any changes required by Clearinghouse. Clearinghouse will establish capability of date and time stamping submitted debt files for priority setting.
- E. Claimant Agency shall transmit a debt file to Clearinghouse in a method and format acceptable to the Clearinghouse. The Claimant Agency shall make every effort to submit a file to Clearinghouse the week of January 4.
- F. Claimant Agency shall, after a debt file has been submitted to Clearinghouse, advise Clearinghouse of any debtor repayment or protests and instructions to delete or reduce a delinquent debt by submitting a new debt file. If Claimant Agency accepts full or partial payment against a debt file that has been submitted to Clearinghouse and sufficient notice is not provided to Clearinghouse to make a timely change to debt file reflecting the payment, Claimant Agency is responsible to refund any resulting fee that may be due to debtor. If Claimant Agency erroneously submits a debt file to the Clearinghouse the claimant agency is responsible for any fees charged the debtor by the Clearinghouse or Department of Revenue.
- G. Upon receipt of notice by the Department under IC 6-8.1-9.5-4 that a tax refund is available, Claimant Agency shall, within fifteen (15) days of the Department's

notice provide debtor with the notice required under IC 6-8.1-9.5-5 and, if properly contested by the debtor, provide the debtor with the hearing required under IC 6-8.1-9.5-7(b)

III. REPRESENTATIONS AND OBLIGATIONS OF CLEARINGHOUSE

- A. Clearinghouse shall, upon receipt of Claimant Agency's debt file, compile the information and submit the data to the Department.
- B. Clearinghouse shall make access to Internet-based functionality available to Claimant Agency through which Claimant Agency shall submit debt files.
- C. Clearinghouse shall direct that funds received from Department will be remitted to Claimant Agency within a reasonable time from the date of receipt from Department. Thereafter, Clearinghouse will provide the Claimant Agency an accounting of funds collected which will include the name of the debtor and the amount of the debt setoff by debt unique identification number.
- D. Clearinghouse will provide a toll free telephone number for use by Claimant Agency to receive technical support and provide information on the use of the Clearinghouse internet-based functionality and the processing of debts for submission to Department. Technical support and information shall be available from 8:00 a.m. until 5:00 p.m. (EST), Monday through Friday, excluding holidays. Voicemail and e-mail access shall also be provided as a part of the support/information response system.

IV. UNDERSTANDING OF PARTIES

- A. To recover the costs incurred by Department in collecting debts, the Code authorizes Department to charge the debtor a fee on any funds Department collects for a Claimant Agency. This fee will be added to the amount due when the collection is made and Department will retain the fee once collected. To recover the costs incurred by Claimant Agency in submitting debts for collection, a local collection assistance fee of twenty dollars (\$20.00) is imposed by Clearinghouse on each delinquent debt submitted to Department and collected through setoff. Department must collect this fee as part of the debt and remit it to Clearinghouse. If Claimant Agency is due a refund of more than twenty-five dollars (\$25.00), Department will establish the tax refund setoff in the amount of the delinquent debt plus its Department fee and the local collection assistance fee. If Department is able to collect only part of a debt through setoff, its fee has priority over the local collection assistance fee and over the remainder of the delinquent debt. The local collection assistance fee has priority over the remainder of the delinquent debt.
- B. The Code establishes that the priority in multiple claims to refunds must be in the order in time that the Clearinghouse submits a claim for collection on behalf of the Claimant Agency. When multiple claims among local claimant agencies are submitted for setoff to Clearinghouse, the claims have priority based on the date and time each claimant agency requested Clearinghouse to submit debts on its behalf. The date and time of submission of the debt file shall constitute the date and time to establish the priority. Clearinghouse shall use submission receipt date and time of original file for priority date and time of specific debt. Additions to a delinquent debt through accrued interest and/or penalties will not change the priority date. Any new delinquent debt for same local Claimant Agency will have a new submission date and time, including new debts for a previously submitted debtor.

- C. Existing submitted delinquent debts may be adjusted upwards for interest and fees, and will retain their original priority order. A later new delinquent debt, even if from the same debtor shall be date stamped by Clearinghouse with the later submission date.
- D. In the event of partial payment of a delinquent debt, Claimant Agency may continue to submit the balance of the debt, if twenty-five dollars (\$25.00) or more, as a part of subsequent data files. If the delinquent debt is reduced to an amount of less than twenty-five dollars (\$25.00), it may be combined with a future delinquent debt submission for the same debtor, and will be treated as a part of the new delinquent debt for purposes of priority and imposition of the local collection assistance fee.
- E. Claimant Agency acknowledges that Claimant Agency is responsible for the notice and hearing requirements of the Code pursuant to IC 6-8.1-9.5. Clearinghouse shall not accept a debt file that is not prepared as specified by Clearinghouse, that has not been certified by Clearinghouse as having complied with the notice and hearing procedures as set forth in the Code pursuant to IC 6-8.1-9.5. Clearinghouse agrees to submit delinquent debts to Department; provided, however Claimant Agency is solely responsible for complying with the Code, specifically including the notice and hearing provisions and other requirements of the Code.
- F. Intercepted funds will be disbursed by Department to Claimant Agency at the direction of Clearinghouse. Claimant Agency shall establish and maintain any necessary accounts to receive intercepted funds as directed by Clearinghouse. Clearinghouse shall timely direct Claimant Agency to establish and maintain such necessary accounts.

V. **COMPENSATION**

- A. Clearinghouse shall receive as compensation for its services the twenty dollars (\$20.00) local collection assistance fee collected by Department on each delinquent debt that is submitted by Clearinghouse and collected through a successful interception. "Successful Interception" occurs when Department matches all or a portion of a debt submitted by Clearinghouse against a State tax refund for interception and payment towards a delinquent debt owed to Claimant Agency.
- B. Claimant Agency authorizes Department to retain and remit the local collection assistance fee to Clearinghouse for each successful debt interception submitted by Claimant Agency. Claimant Agency agrees that Clearinghouse shall retain the local collection assistance fee collected by it in the event Claimant Agency is required, by statute or otherwise, to return to a debtor funds that have been setoff by Department.

- VI. **INDEMNIFICATION; REIMBURSEMENT; DISCLAIMER**. Claimant Agency fully understands and warrants to Clearinghouse that by submission of any delinquent debt submitted to Clearinghouse for setoff Claimant Agency has complied with all of the provisions of this Agreement and all of the provisions of the Code that are required prior to submission of a debt for setoff. Claimant Agency shall hold Clearinghouse free and harmless and shall indemnify Clearinghouse against any and all damages, claims, of action, injuries, actions, liability, or proceedings arising from the failure of Claimant Agency to so perform. Claimant Agency shall be responsible for the repayment of any sums received by it, including interest, penalties and court costs, to a debtor in the event a court of competent jurisdiction rules that said repayment is due to a debtor or debtors. Except as expressly stated in this Agreement, Clearinghouse disclaims any representations and warranties that might otherwise be implied in connection with this Agreement and Clearinghouse's services, including, without limitation, any implied warranties of merchantability, fitness for a particular purpose, date accuracy, system integration, and non-infringement.

VII. **NOTICE.** Any notice required to be given under this Agreement shall be sent by certified or registered mail postage prepaid to:

_____ Association of Indiana Counties (Clearinghouse);

_____ (debt setoff coordinator)

_____ (Claimant Agency)

_____ (Claimant Agency address);

VIII. **ASSIGNMENT; SUBCONTRACTING.** This Agreement is not assignable by either party. To facilitate efficient administration of the Program, Clearinghouse may utilize the services of contractors in connection with Clearinghouse's obligations under this Agreement, provided that Clearinghouse shall remain responsible for any such contractor's acts and omissions in connection with this Agreement as if such acts and omissions were conducted by Clearinghouse's own personnel. Any contractor personnel authorized to request or receive information relating the Clearinghouse's exchange of data with Department or Claimant Agency for purposes of administering the Program shall be designated, in writing, to Claimant Agency as contemplated herein.

IX. **CONFIDENTIAL INFORMATION; OWNERSHIP RIGHTS.**

- A. In the course of performance of this Agreement, the parties may find it necessary to disclose to the other party certain confidential information ("Confidential Information"). Confidential Information includes, but is not limited to, information relating to the parties' employees, trade secrets, customers, vendors, finances, operations, products, and other business information. Except as otherwise provided by law, the following terms apply to Confidential Information: (i) the receiving party shall treat as confidential and use the same degree of care as it employs in the protection of its own similar confidential information, but in no event less than a reasonable degree of care; and, (ii) the receiving party will only use the information in connection with its business dealings with the disclosing party, and shall disclose information only to employees or contractors having a need to know and who agree to be bound by the terms of this Section, unless otherwise authorized in writing by the disclosing party. Information shall not be subject to these terms if: (i) it is in the public domain at the time of disclosure, or enters the public domain without breach of this Agreement; (ii) it is known to the receiving party prior to the disclosure, or it is independently developed by the receiving party; or (iii) it is obtained by receiving party in good faith from a third party not under obligation of secrecy to the disclosing party. Receiving party will be permitted to disclose that portion of Confidential Information which is the subject of a court or government agency order to disclose, provided the receiving party gives prompt notice to the disclosing party to allow the disclosing party to contest such order. The obligations set forth in this Section survive termination, rescission, non-renewal or expiration of this Agreement
- B. All information, including but not limited to printed, written, oral or computer-formatted information, which Clearinghouse may gain access to during the course of the performance of this Agreement shall be the property of Claimant Agency, shall be held in the strictest confidence, and shall be used solely for the business purposes that are the subject of this Agreement. Clearinghouse shall maintain confidentiality of such information not only during the course of the performance of this Agreement, but following its termination.
- C. Claimant Agency acknowledges that, as between the parties, Clearinghouse owns and retains title to all intellectual property rights embodied in, or practiced by, Clearinghouse in connection with the

Program and the proprietary methods utilized by Clearinghouse in performance of its services under this Agreement, and no licenses of such intellectual property rights to Claimant Agency are granted or implied by this Agreement.

X. MISCELLANEOUS

- A. This Agreement represents the full and final understanding of the parties with respect to the subject matter described herein and supersedes any and all prior agreements or understandings, written or oral, express or implied. This Agreement may be modified or amended only by a written statement signed by both parties.
- B. The laws of the State of Indiana shall govern the terms and conditions of this Agreement.
- C. Claimant Agency shall enter into no other contract for similar tax return intercept services with any other entity so long as this Agreement remains in effect.
- D. This Agreement is subject to appropriation.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and date first above written, all by authority of their respective governing bodies.

CLAIMANT AGENCY

ATTEST:

[Signature Page to Memorandum of Understanding and Agreement]

ASSOCIATION OF INDIANA COUNTIES

David Bottorff, Executive Director

ATTEST:

Ryan Hoff, General Counsel

[Signature Page to Memorandum of Understanding and Agreement]