

1-1-1975

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Recommended Citation

Owens, Dennis J. (1975) "An Act to Provide for Payment of Local Taxes under Protest," *Journal of Legislation*: Vol. 2: Iss. 1, Article 8.
Available at: <http://scholarship.law.nd.edu/jleg/vol2/iss1/8>

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AN ACT TO PROVIDE FOR PAYMENT OF
LOCAL TAXES UNDER PROTEST

Dennis J. Owens

Be it enacted by the _____ of the State of
_____:

1. Any taxpayer may protest all or any part of any taxes assessed against him, except taxes collected by the director of revenue of the state. Any taxpayer desiring to pay taxes under protest shall, at the time of paying such taxes, file with the collector a written statement setting forth the grounds on which his protest is based, and shall further cite any law or facts on which he relies in protesting the whole or any part of such taxes.

2. The collector shall issue a receipt to any taxpayer who pays his taxes, under protest or not. If the payment of taxes is under protest, the collector shall note that fact on the receipt.

3. The collector shall disburse to the proper official all portions of taxes not protested, and he shall impound in a separate fund all portions of taxes which are protested. Every taxpayer protesting the payment of taxes, within ninety days after filing his protest, shall commence an action against the collector by filing a petition for the recovery of the amount protested in the court of general jurisdiction of the county in which the collector maintains his office. If any taxpayer so protesting his taxes shall fail to commence an action in the court of general jurisdiction for the recovery of the taxes protested within the ninety days, the protest shall become void and the collector shall then disburse to the proper official the impounded taxes.

4. Trial of the action in the court of general jurisdiction shall be in the manner prescribed for nonjury civil proceedings, and, after determination of the issues, the court shall make such orders as may be just and equitable to refund to the taxpayer all or any part of the taxes paid under protest or to authorize the collector to release and disburse all or any part of the impounded taxes. Either party to the proceedings may appeal the determination of the circuit court.

5. If the collector has deposited in interest bearing time deposit accounts the taxes paid under protest, the interest earned shall be paid to the party who is found to be entitled to the impounded money. No

obligation to deposit impounded tax funds in interest bearing accounts is created by this act.

A bill similar to the one published here was introduced to the 1975 Indiana State Senate session by Burnett C. Bauer. The bill was drafted by the Legislative Research Service of Notre Dame Law School.

A predecessor to this bill is Missouri's law 139.031-1973. This bill differs in that it is thoroughly redrafted for the sake of clarity and that it explicitly authorizes, but does not require, payment of interest. We felt that a failure to make this payment of interest would involve a taking of property (power to earn interest) without due process of law. The right to protest is limited to those taxpayers who pay their taxes on time.