

# SENATE MOTION

**MADAM PRESIDENT:**

**I move** that Engrossed House Bill 1241 be amended to read as follows:

- 1           Page 1, between the enacting clause and line 1, begin a new  
2 paragraph and insert:  
3           "SECTION 1. IC 6-2.5-1-5, AS AMENDED BY P.L.182-2009(ss),  
4 SECTION 174, IS AMENDED TO READ AS FOLLOWS  
5 [EFFECTIVE JULY 1, 2010]: Sec. 5. (a) Except as provided in  
6 subsection (b), "gross retail income" means the total amount of  
7 consideration, including cash, credit, property, and services, for which  
8 tangible personal property is sold, leased, or rented, valued in money,  
9 whether received in money or otherwise, without any deduction for:  
10           (1) the seller's cost of the property sold;  
11           (2) the cost of materials used, labor or service cost, interest,  
12 losses, all costs of transportation to the seller, all taxes imposed  
13 on the seller, and any other expense of the seller;  
14           (3) charges by the seller for any services necessary to complete  
15 the sale, other than delivery and installation charges;  
16           (4) delivery charges; or  
17           (5) consideration received by the seller from a third party if:  
18           (A) the seller actually receives consideration from a party  
19 other than the purchaser and the consideration is directly  
20 related to a price reduction or discount on the sale;  
21           (B) the seller has an obligation to pass the price reduction or  
22 discount through to the purchaser;  
23           (C) the amount of the consideration attributable to the sale is  
24 fixed and determinable by the seller at the time of the sale of  
25 the item to the purchaser; and  
26           (D) the price reduction or discount is identified as a third party  
27 price reduction or discount on the invoice received by the  
28 purchaser or on a coupon, certificate, or other documentation  
29 presented by the purchaser.  
30           For purposes of subdivision (4), delivery charges are charges by the

1 seller for preparation and delivery of the property to a location  
 2 designated by the purchaser of property, including but not limited to  
 3 transportation, shipping, postage, handling, crating, and packing.

4 (b) "Gross retail income" does not include that part of the gross  
 5 receipts attributable to:

6 (1) the value of any tangible personal property received in a like  
 7 kind exchange in the retail transaction, if the value of the property  
 8 given in exchange is separately stated on the invoice, bill of sale,  
 9 or similar document given to the purchaser;

10 (2) the receipts received in a retail transaction which constitute  
 11 interest, finance charges, or insurance premiums on either a  
 12 promissory note or an installment sales contract;

13 (3) discounts, including cash, terms, or coupons that are not  
 14 reimbursed by a third party that are allowed by a seller and taken  
 15 by a purchaser on a sale;

16 (4) interest, financing, and carrying charges from credit extended  
 17 on the sale of personal property if the amount is separately stated  
 18 on the invoice, bill of sale, or similar document given to the  
 19 purchaser;

20 (5) any taxes legally imposed directly on the consumer that are  
 21 separately stated on the invoice, bill of sale, or similar document  
 22 given to the purchaser; **or**

23 (6) installation charges that are separately stated on the invoice,  
 24 bill of sale, or similar document given to the purchaser; **or**

25 **(7) telecommunications nonrecurring charges.**

26 (c) A public utility's or a power subsidiary's gross retail income  
 27 includes all gross retail income received by the public utility or power  
 28 subsidiary, including any minimum charge, flat charge, membership  
 29 fee, or any other form of charge or billing.

30 SECTION 2. IC 6-2.5-1-14.5 IS ADDED TO THE INDIANA  
 31 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 32 [EFFECTIVE JULY 1, 2010]: **Sec. 14.5. "Computer software**  
 33 **maintenance contract" means a contract that obligates a person to**  
 34 **provide a customer with future updates or upgrades of computer**  
 35 **software.**

36 SECTION 3. IC 6-2.5-1-27.2 IS ADDED TO THE INDIANA  
 37 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 38 [EFFECTIVE JULY 1, 2010]: **Sec. 27.2. "Telecommunications**  
 39 **nonrecurring charges" means an amount billed for installation,**  
 40 **connection, change, or initiation of a telecommunications service**  
 41 **received by a customer.**

42 SECTION 4. IC 6-2.5-1-28.5 IS ADDED TO THE INDIANA  
 43 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 44 [EFFECTIVE JULY 1, 2010]: **Sec. 28.5. "Transferred**  
 45 **electronically" means obtained by a purchaser by means other**  
 46 **than tangible storage media.**

1 SECTION 5. IC 6-2.5-2-2, AS AMENDED BY P.L.146-2008,  
 2 SECTION 310, IS AMENDED TO READ AS FOLLOWS  
 3 [EFFECTIVE JULY 1, 2010]: Sec. 2. (a) The state gross retail tax is  
 4 measured by the gross retail income received by a retail merchant in a  
 5 retail unitary transaction and is imposed at the following rates:

6 STATE	GROSS RETAIL INCOME		
7 GROSS	FROM THE		
8 RETAIL	RETAIL UNITARY		
9 TAX	TRANSACTION		
10 \$ 0		less than	\$0.08
11 \$ 0.01	at least \$ 0.08	but less than	\$0.21
12 \$ 0.02	at least \$ 0.21	but less than	\$0.36
13 \$ 0.03	at least \$ 0.36	but less than	\$0.51
14 \$ 0.04	at least \$ 0.51	but less than	\$0.64
15 \$ 0.05	at least \$ 0.64	but less than	\$0.79
16 \$ 0.06	at least \$ 0.79	but less than	\$0.93
17 \$ 0.07	at least \$ 0.93	but less than	\$1.07

18 On a retail unitary transaction in which the gross retail income received  
 19 by the retail merchant is one dollar and seven cents (\$1.07) or more,  
 20 the state gross retail tax is seven percent (7%) of that gross retail  
 21 income.

22 (b) If the tax computed under subsection (a) **carried to the third**  
 23 **decimal place** results in a fraction of one-half cent (\$0.005) or more,  
 24 **the numeral in the third decimal place being greater than four (4),**  
 25 the amount of the tax shall be rounded to the next additional cent.

26 SECTION 6. IC 6-2.5-4-16.4, AS ADDED BY P.L.1-2009,  
 27 SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 28 JULY 1, 2010]: Sec. 16.4. (a) As used in this section, "end user" does  
 29 not include a person who receives by contract a product transferred  
 30 electronically for further commercial broadcast, rebroadcast,  
 31 transmission, retransmission, licensing, relicensing, distribution,  
 32 redistribution, or exhibition of the product, in whole or in part, to  
 33 another person or persons.

34 (b) A person is a retail merchant making a retail transaction when  
 35 the person:

- 36 (1) electronically transfers specified digital products to an end  
 37 user; and
- 38 (2) grants to the end user the right of permanent use of the  
 39 specified digital products that is not conditioned upon continued  
 40 payment by the purchaser.

41 (c) **The sale of a digital code that may be used to obtain a**  
 42 **product transferred electronically shall be taxed in the same**  
 43 **manner as the product transferred electronically. As used in this**  
 44 **subsection, a digital code means a method that permits a purchaser**  
 45 **to obtain at a later date a product transferred electronically.**

46 SECTION 7. IC 6-2.5-4-17 IS ADDED TO THE INDIANA CODE

1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
2 1, 2010]: **Sec. 17. A person is a retail merchant making a retail**  
3 **transaction when the person enters into a computer software**  
4 **maintenance contract to provide future updates or upgrades to**  
5 **computer software.**

6 SECTION 8. IC 6-2.5-5-18, AS AMENDED BY P.L.182-2009(ss),  
7 SECTION 178, IS AMENDED TO READ AS FOLLOWS  
8 [EFFECTIVE JULY 1, 2010]: Sec. 18. (a) Sales of durable medical  
9 equipment, **mobility enhancing equipment**, prosthetic devices,  
10 artificial limbs, orthopedic devices, dental prosthetic devices,  
11 eyeglasses, contact lenses, and other medical supplies and devices are  
12 exempt from the state gross retail tax, if the sales are prescribed by a  
13 person licensed to issue the prescription.

14 (b) Rentals of durable medical equipment, **mobility enhancing**  
15 **equipment**, and other medical supplies and devices are exempt from  
16 the state gross retail tax, if the rentals are prescribed by a person  
17 licensed to issue the prescription.

18 (c) Sales of hearing aids are exempt from the state gross retail tax  
19 if the hearing aids are fitted or dispensed by a person licensed or  
20 registered for that purpose. In addition, sales of hearing aid parts,  
21 attachments, or accessories are exempt from the state gross retail tax.  
22 For purposes of this subsection, a hearing aid is a device which is worn  
23 on the body and which is designed to aid, improve, or correct defective  
24 human hearing.

25 (d) Sales of colostomy bags, ileostomy bags, and the medical  
26 equipment, supplies, and devices used in conjunction with those bags  
27 are exempt from the state gross retail tax.

28 (e) Sales of equipment and devices used to administer insulin are  
29 exempt from the state gross retail tax.

30 (f) Sales of equipment and devices used to monitor blood glucose  
31 level, including blood glucose meters and measuring strips, lancets,  
32 and other similar diabetic supplies, are exempt from the state gross  
33 retail tax, regardless of whether the equipment and devices are  
34 prescribed.

35 SECTION 9. IC 6-2.5-5-20, AS AMENDED BY P.L.195-2005,  
36 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
37 JULY 1, 2010]: Sec. 20. (a) Sales of food and food ingredients for  
38 human consumption are exempt from the state gross retail tax.

39 (b) For purposes of this section, the term "food and food ingredients  
40 for human consumption" includes the following items if sold without  
41 eating utensils provided by the seller:

42 (1) Food sold by a seller whose proper primary NAICS  
43 classification is manufacturing in sector 311, except subsector  
44 3118 (bakeries).

45 (2) Food sold in an unheated state by weight or volume as a single  
46 item.

1 (3) Bakery items, including bread, rolls, buns, biscuits, bagels,  
 2 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts,  
 3 muffins, bars, cookies, and tortillas.

4 (c) Except as otherwise provided by subsection (b), for purposes of  
 5 this section, the term "food and food ingredients for human  
 6 consumption" does not include:

- 7 (1) candy;  
 8 (2) alcoholic beverages;  
 9 (3) soft drinks;  
 10 (4) food sold through a vending machine;  
 11 (5) food sold in a heated state or heated by the seller;  
 12 (6) two (2) or more food ingredients mixed or combined by the  
 13 seller for sale as a single item (other than food that is only cut,  
 14 repackaged, or pasteurized by the seller, and eggs, fish, meat,  
 15 poultry, and foods containing these raw animal foods requiring  
 16 cooking by the consumer as recommended by the federal Food  
 17 and Drug Administration in chapter 3, subpart 3-401.11 of its  
 18 Food Code so as to prevent food borne illnesses);  
 19 (7) food sold with eating utensils provided by the seller, including  
 20 plates, knives, forks, spoons, glasses, cups, napkins, or straws (for  
 21 purposes of this subdivision, a plate does not include a container  
 22 or packaging used to transport the food); ~~or~~  
 23 (8) tobacco; **or**  
 24 **(9) dietary supplements.**

25 SECTION 10. IC 6-2.5-11-10, AS AMENDED BY  
 26 P.L.182-2009(ss), SECTION 183, IS AMENDED TO READ AS  
 27 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 10. (a) A certified  
 28 service provider is the agent of a seller, with whom the certified service  
 29 provider has contracted, for the collection and remittance of sales and  
 30 use taxes. As the seller's agent, the certified service provider is liable  
 31 for sales and use tax due each member state on all sales transactions it  
 32 processes for the seller except as set out in this section. A seller that  
 33 contracts with a certified service provider is not liable to the state for  
 34 sales or use tax due on transactions processed by the certified service  
 35 provider unless the seller misrepresented the type of items it sells or  
 36 committed fraud. In the absence of probable cause to believe that the  
 37 seller has committed fraud or made a material misrepresentation, the  
 38 seller is not subject to audit on the transactions processed by the  
 39 certified service provider. A seller is subject to audit for transactions  
 40 not processed by the certified service provider. The member states  
 41 acting jointly may perform a system check of the seller and review the  
 42 seller's procedures to determine if the certified service provider's  
 43 system is functioning properly and the extent to which the seller's  
 44 transactions are being processed by the certified service provider.

45 (b) A person that provides a certified automated system is  
 46 responsible for the proper functioning of that system and is liable to the

1 state for underpayments of tax attributable to errors in the functioning  
 2 of the certified automated system. A seller that uses a certified  
 3 automated system remains responsible and is liable to the state for  
 4 reporting and remitting tax.

5 (c) A seller that has a proprietary system for determining the amount  
 6 of tax due on transactions and has signed an agreement establishing a  
 7 performance standard for that system is liable for the failure of the  
 8 system to meet the performance standard.

9 (d) A certified service provider or a seller using a certified  
 10 automated system that obtains a certification **or taxability matrix** from  
 11 the department is not liable for sales or use tax collection errors that  
 12 result from reliance on the department's certification **or taxability**  
 13 **matrix**. If the department determines that an item or transaction is  
 14 incorrectly classified as to the taxability of the item or transaction, the  
 15 department shall notify the certified service provider or the seller using  
 16 a certified automated system of the incorrect classification. The  
 17 certified service provider or the seller using a certified automated  
 18 system must revise the incorrect classification within ten (10) days  
 19 after receiving notice of the determination from the department. If the  
 20 classification error is not corrected within ten (10) days after receiving  
 21 the department's notice, the certified service provider or the seller using  
 22 a certified automated system is liable for failure to collect the correct  
 23 amount of sales or use tax due and owing.

24 (e) If at least thirty (30) days are not provided between the  
 25 enactment of a statute changing the rate set forth in IC 6-2.5-2-2 and  
 26 the effective date of the rate change, the department shall relieve the  
 27 seller of liability for failing to collect tax at the new rate if:

28 (1) the seller collected the tax at the immediately preceding  
 29 effective rate; and

30 (2) the seller's failure to collect at the current rate does not extend  
 31 beyond thirty (30) days after the effective date of the rate change.

32 A seller is not eligible for the relief provided for in this subsection if  
 33 the seller fraudulently fails to collect at the current rate or solicits  
 34 purchases based on the immediately preceding effective rate.

35 (f) The department shall allow any monetary allowances that are  
 36 provided by the member states to sellers or certified service providers  
 37 in exchange for collecting the sales and use taxes as provided in article  
 38 VI of the agreement.

39 SECTION 11. IC 6-3-1-11, AS AMENDED BY P.L.182-2009(ss),  
 40 SECTION 188, IS AMENDED TO READ AS FOLLOWS  
 41 [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]: Sec. 11. (a) The  
 42 term "Internal Revenue Code" means the Internal Revenue Code of  
 43 1986 of the United States as amended and in effect on ~~February 17,~~  
 44 ~~2009:~~ **January 1, 2010.**

45 (b) Whenever the Internal Revenue Code is mentioned in this  
 46 article, the particular provisions that are referred to, together with all

1 the other provisions of the Internal Revenue Code in effect on ~~February~~  
 2 ~~17, 2009;~~ **January 1, 2010**, that pertain to the provisions specifically  
 3 mentioned, shall be regarded as incorporated in this article by reference  
 4 and have the same force and effect as though fully set forth in this  
 5 article. To the extent the provisions apply to this article, regulations  
 6 adopted under Section 7805(a) of the Internal Revenue Code and in  
 7 effect on ~~February 17, 2009;~~ **January 1, 2010**, shall be regarded as  
 8 rules adopted by the department under this article, unless the  
 9 department adopts specific rules that supersede the regulation.

10 (c) An amendment to the Internal Revenue Code made by an act  
 11 passed by Congress before ~~February 17, 2009;~~ **January 1, 2010**, that  
 12 is effective for any taxable year that began before January 1, ~~2009;~~  
 13 **2010**, and that affects:

- 14 (1) individual adjusted gross income (as defined in Section 62 of  
 15 the Internal Revenue Code);
- 16 (2) corporate taxable income (as defined in Section 63 of the  
 17 Internal Revenue Code);
- 18 (3) trust and estate taxable income (as defined in Section 641(b)  
 19 of the Internal Revenue Code);
- 20 (4) life insurance company taxable income (as defined in Section  
 21 801(b) of the Internal Revenue Code);
- 22 (5) mutual insurance company taxable income (as defined in  
 23 Section 821(b) of the Internal Revenue Code); or
- 24 (6) taxable income (as defined in Section 832 of the Internal  
 25 Revenue Code);

26 is also effective for that same taxable year for purposes of determining  
 27 adjusted gross income under section 3.5 of this chapter.

28 SECTION 12. IC 6-3-2-2.5, AS AMENDED BY P.L.182-2009(ss),  
 29 SECTION 192, IS AMENDED TO READ AS FOLLOWS  
 30 [EFFECTIVE NOVEMBER 6, 2009 (RETROACTIVE)]: Sec. 2.5. (a)  
 31 This section applies to a resident person.

32 (b) Resident persons are entitled to a net operating loss deduction.  
 33 The amount of the deduction taken in a taxable year may not exceed  
 34 the taxpayer's unused Indiana net operating losses carried back or  
 35 carried over to that year.

36 (c) An Indiana net operating loss equals the taxpayer's federal net  
 37 operating loss for a taxable year as calculated under Section 172 of the  
 38 Internal Revenue Code, adjusted for the modifications required by  
 39 IC 6-3-1-3.5.

40 (d) The following provisions apply for purposes of subsection (c):

- 41 (1) The modifications that are to be applied are those  
 42 modifications required under IC 6-3-1-3.5 for the same taxable  
 43 year in which each net operating loss was incurred.
- 44 (2) An Indiana net operating loss includes a net operating loss that  
 45 arises when the modifications required by IC 6-3-1-3.5 exceed the  
 46 taxpayer's federal adjusted gross income (as defined in Section 62

1 of the Internal Revenue Code) for the taxable year in which the  
2 Indiana net operating loss is determined.

3 (e) Subject to the limitations contained in subsection (g), an Indiana  
4 net operating loss carryback or carryover shall be available as a  
5 deduction from the taxpayer's adjusted gross income (as defined in  
6 IC 6-3-1-3.5) in the carryback or carryover year provided in subsection  
7 (f).

8 (f) Carrybacks and carryovers shall be determined under this  
9 subsection as follows:

10 (1) An Indiana net operating loss shall be an Indiana net operating  
11 loss carryback to each of the carryback years preceding the  
12 taxable year of the loss.

13 (2) An Indiana net operating loss shall be an Indiana net operating  
14 loss carryover to each of the carryover years following the taxable  
15 year of the loss.

16 (3) Carryback years shall be determined by reference to the  
17 number of years allowed for carrying back a net operating loss  
18 under Section 172(b) of the Internal Revenue Code. However,  
19 with respect to the carryback period for a net operating loss:

20 (A) for which ~~an eligible small business, as defined in Section~~  
21 ~~172(b)(1)(H)(iv) of the Internal Revenue Code; a taxpayer~~  
22 made an election to use five (5) years instead of two (2) years  
23 under Section 172(b)(1)(H) of the Internal Revenue Code, two  
24 (2) years shall be used instead of five (5) years; or

25 (B) that is a qualified disaster loss for which the taxpayer  
26 elected to have the net operating loss carryback period with  
27 respect to the loss year determined without regard to Section  
28 172(b)(1)(J) of the Internal Revenue Code, five (5) years shall  
29 be used.

30 (4) Carryover years shall be determined by reference to the  
31 number of years allowed for carrying over net operating losses  
32 under Section 172(b) of the Internal Revenue Code.

33 (5) A taxpayer who makes an election under Section 172(b)(3) of  
34 the Internal Revenue Code to relinquish the carryback period with  
35 respect to a net operating loss for any taxable year shall be  
36 considered to have also relinquished the carryback of the Indiana  
37 net operating loss for purposes of this section.

38 (g) The entire amount of the Indiana net operating loss for any  
39 taxable year shall be carried to the earliest of the taxable years to which  
40 (as determined under subsection (f)) the loss may be carried. The  
41 amount of the Indiana net operating loss remaining after the deduction  
42 is taken under this section in a taxable year may be carried back or  
43 carried over as provided in subsection (f). The amount of the Indiana  
44 net operating loss carried back or carried over from year to year shall  
45 be reduced to the extent that the Indiana net operating loss carryback  
46 or carryover is used by the taxpayer to obtain a deduction in a taxable

1 year until the occurrence of the earlier of the following:

2 (1) The entire amount of the Indiana net operating loss has been  
3 used as a deduction.

4 (2) The Indiana net operating loss has been carried over to each  
5 of the carryover years provided by subsection (f).

6 SECTION 13. IC 6-3-2-2.6, AS AMENDED BY P.L.182-2009(ss),  
7 SECTION 193, IS AMENDED TO READ AS FOLLOWS  
8 [EFFECTIVE NOVEMBER 6, 2009 (RETROACTIVE)]: Sec. 2.6. (a)  
9 This section applies to a corporation or a nonresident person.

10 (b) Corporations and nonresident persons are entitled to a net  
11 operating loss deduction. The amount of the deduction taken in a  
12 taxable year may not exceed the taxpayer's unused Indiana net  
13 operating losses carried back or carried over to that year.

14 (c) An Indiana net operating loss equals the taxpayer's federal net  
15 operating loss for a taxable year as calculated under Section 172 of the  
16 Internal Revenue Code, derived from sources within Indiana and  
17 adjusted for the modifications required by IC 6-3-1-3.5.

18 (d) The following provisions apply for purposes of subsection (c):

19 (1) The modifications that are to be applied are those  
20 modifications required under IC 6-3-1-3.5 for the same taxable  
21 year in which each net operating loss was incurred.

22 (2) The amount of the taxpayer's net operating loss that is derived  
23 from sources within Indiana shall be determined in the same  
24 manner that the amount of the taxpayer's adjusted income derived  
25 from sources within Indiana is determined under section 2 of this  
26 chapter for the same taxable year during which each loss was  
27 incurred.

28 (3) An Indiana net operating loss includes a net operating loss that  
29 arises when the modifications required by IC 6-3-1-3.5 exceed the  
30 taxpayer's federal taxable income (as defined in Section 63 of the  
31 Internal Revenue Code), if the taxpayer is a corporation, or when  
32 the modifications required by IC 6-3-1-3.5 exceed the taxpayer's  
33 federal adjusted gross income (as defined by Section 62 of the  
34 Internal Revenue Code), if the taxpayer is a nonresident person,  
35 for the taxable year in which the Indiana net operating loss is  
36 determined.

37 (e) Subject to the limitations contained in subsection (g), an Indiana  
38 net operating loss carryback or carryover shall be available as a  
39 deduction from the taxpayer's adjusted gross income derived from  
40 sources within Indiana (as defined in section 2 of this chapter) in the  
41 carryback or carryover year provided in subsection (f).

42 (f) Carrybacks and carryovers shall be determined under this  
43 subsection as follows:

44 (1) An Indiana net operating loss shall be an Indiana net operating  
45 loss carryback to each of the carryback years preceding the  
46 taxable year of the loss.

- 1 (2) An Indiana net operating loss shall be an Indiana net operating  
 2 loss carryover to each of the carryover years following the taxable  
 3 year of the loss.
- 4 (3) Carryback years shall be determined by reference to the  
 5 number of years allowed for carrying back a net operating loss  
 6 under Section 172(b) of the Internal Revenue Code. However,  
 7 with respect to the carryback period for a net operating loss:
- 8 (A) for which ~~an eligible small business, as defined in Section~~  
 9 ~~172(b)(1)(H)(iv) of the Internal Revenue Code;~~ **a taxpayer**  
 10 made an election to use five (5) years instead of two (2) years  
 11 under Section 172(b)(1)(H) of the Internal Revenue Code, two  
 12 (2) years shall be used instead of five (5) years; or
- 13 (B) that is a qualified disaster loss for which the taxpayer  
 14 elected to have the net operating loss carryback period with  
 15 respect to the loss year determined without regard to Section  
 16 172(b)(1)(J) of the Internal Revenue Code, five (5) years shall  
 17 be used.
- 18 (4) Carryover years shall be determined by reference to the  
 19 number of years allowed for carrying over net operating losses  
 20 under Section 172(b) of the Internal Revenue Code.
- 21 (5) A taxpayer who makes an election under Section 172(b)(3) of  
 22 the Internal Revenue Code to relinquish the carryback period with  
 23 respect to a net operating loss for any taxable year shall be  
 24 considered to have also relinquished the carryback of the Indiana  
 25 net operating loss for purposes of this section.
- 26 (g) The entire amount of the Indiana net operating loss for any  
 27 taxable year shall be carried to the earliest of the taxable years to which  
 28 (as determined under subsection (f)) the loss may be carried. The  
 29 amount of the Indiana net operating loss remaining after the deduction  
 30 is taken under this section in a taxable year may be carried back or  
 31 carried over as provided in subsection (f). The amount of the Indiana  
 32 net operating loss carried back or carried over from year to year shall  
 33 be reduced to the extent that the Indiana net operating loss carryback  
 34 or carryover is used by the taxpayer to obtain a deduction in a taxable  
 35 year until the occurrence of the earlier of the following:
- 36 (1) The entire amount of the Indiana net operating loss has been  
 37 used as a deduction.
- 38 (2) The Indiana net operating loss has been carried over to each  
 39 of the carryover years provided by subsection (f).
- 40 (h) An Indiana net operating loss deduction determined under this  
 41 section shall be allowed notwithstanding the fact that in the year the  
 42 taxpayer incurred the net operating loss the taxpayer was not subject to  
 43 the tax imposed under section 1 of this chapter because the taxpayer  
 44 was:
- 45 (1) a life insurance company (as defined in Section 816(a) of the  
 46 Internal Revenue Code); or

- 1 (2) an insurance company subject to tax under Section 831 of the  
 2 Internal Revenue Code.
- 3 (i) In the case of a life insurance company that claims an operations  
 4 loss deduction under Section 810 of the Internal Revenue Code, this  
 5 section shall be applied by:
- 6 (1) substituting the corresponding provisions of Section 810 of the  
 7 Internal Revenue Code in place of references to Section 172 of  
 8 the Internal Revenue Code; and
- 9 (2) substituting life insurance company taxable income (as  
 10 defined in Section 801 the Internal Revenue Code) in place of  
 11 references to taxable income (as defined in Section 63 of the  
 12 Internal Revenue Code).
- 13 (j) For purposes of an amended return filed to carry back an Indiana  
 14 net operating loss:
- 15 (1) the term "due date of the return", as used in IC 6-8.1-9-1(a)(1),  
 16 means the due date of the return for the taxable year in which the  
 17 net operating loss was incurred; and
- 18 (2) the term "date the payment was due", as used in  
 19 IC 6-8.1-9-2(c), means the due date of the return for the taxable  
 20 year in which the net operating loss was incurred.
- 21 SECTION 14. IC 6-3-4-16.5 IS ADDED TO THE INDIANA CODE  
 22 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 23 1, 2010]: **Sec. 16.5. (a) This section applies to:**
- 24 (1) **Form W-2 federal income tax withholding statements; and**  
 25 (2) **Form WH-3 annual withholding tax reports;**  
 26 **filed with the department after December 31, 2010.**
- 27 (b) **If an employer or any person or entity acting on behalf of an**  
 28 **employer files more than twenty-five (25) Form W-2 federal**  
 29 **income tax withholding statements with the department in a**  
 30 **calendar year, all Form W-2 federal income tax withholding**  
 31 **statements and Form WH-3 annual withholding tax reports filed**  
 32 **with the department in that calendar year by the employer or the**  
 33 **person or entity acting on behalf of the employer must be filed in**  
 34 **an electronic format specified by the department."**

- 1 Page 7, after line 36, begin a new paragraph and insert:
- 2 "SECTION 23. **An emergency is declared for this act.**".
- 3 Renumber all SECTIONS consecutively.  
(Reference is to EHB 1241 as printed February 19, 2010.)

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Senator KENLEY