
SENATE BILL No. 545

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.5-4-5; IC 6-3-2.

Synopsis: State tax matters. Provides that the sales tax exclusion for electrical energy, natural or artificial gas, water, steam, or steam heating service sold to a person for use in manufacturing, production, refining, or agriculture and pertaining to food preparation applies only if those sales are separately metered. (Another law allows an exemption for that part of the energy directly used for these purposes when the sales are not separately metered.) Eliminates the carryback of net operating losses under the adjusted gross income tax.

Effective: July 1, 2011; January 1, 2012.

Kenley

January 20, 2011, read first time and referred to Committee on Tax and Fiscal Policy.

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First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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SENATE BILL No. 545



A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-2.5-4-5, AS AMENDED BY P.L.32-2007,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2011]: Sec. 5. (a) As used in this section, a "power subsidiary"
4 means a corporation which is owned or controlled by one (1) or more
5 public utilities that furnish or sell electrical energy, natural or artificial
6 gas, water, steam, or steam heat and which produces power exclusively
7 for the use of those public utilities.
8 (b) A power subsidiary or a person engaged as a public utility is a
9 retail merchant making a retail transaction when the subsidiary or
10 person furnishes or sells electrical energy, natural or artificial gas,
11 water, steam, or steam heating service to a person for commercial or
12 domestic consumption.
13 (c) Notwithstanding subsection (b), a power subsidiary or a person
14 engaged as a public utility is not a retail merchant making a retail
15 transaction in any of the following transactions:
16 (1) The power subsidiary or person provides, installs, constructs,
17 services, or removes tangible personal property which is used in



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connection with the furnishing of the services or commodities listed in subsection (b).

(2) The power subsidiary or person sells the services or commodities listed in subsection (b) to another public utility or power subsidiary described in this section or a person described in section 6 of this chapter.

(3) The power subsidiary or person sells the services or commodities listed in subsection (b) to a person for use in manufacturing, mining, production, refining, oil extraction, mineral extraction, irrigation, agriculture, or horticulture. However, this exclusion for sales of the services and commodities only applies if the services are consumed as an essential and integral part of an integrated process that produces tangible personal property and those sales are:

(A) either:

(i) separately metered for the excepted uses listed in this subdivision; or if ~~those sales are not separately metered but are~~

(ii) predominately used by the purchaser for the excepted uses listed in this subdivision, **in the case of services or commodities listed in subsection (b) that are not used in food preparation; or**

(B) separately metered for the excepted uses listed in this subdivision, in the case of services or commodities listed in subsection (b) that are used in food preparation.

(4) The power subsidiary or person sells the services or commodities listed in subsection (b) and all the following conditions are satisfied:

(A) The services or commodities are sold to a business that after June 30, 2004:

- (i) relocates all or part of its operations to a facility; or
- (ii) expands all or part of its operations in a facility;

located in a military base (as defined in IC 36-7-30-1(c)), a military base reuse area established under IC 36-7-30, the part of an economic development area established under IC 36-7-14.5-12.5 that is or formerly was a military base (as defined in IC 36-7-30-1(c)), a military base recovery site designated under IC 6-3.1-11.5, or a qualified military base enhancement area established under IC 36-7-34.

(B) The business uses the services or commodities in the facility described in clause (A) not later than five (5) years after the operations that are relocated to the facility or

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expanded in the facility commence.

(C) The sales of the services or commodities are separately metered for use by the relocated or expanded operations.

(D) In the case of a business that uses the services or commodities in a qualified military base enhancement area established under IC 36-7-34-4(1), the business must satisfy at least one (1) of the following criteria:

- (i) The business is a participant in the technology transfer program conducted by the qualified military base (as defined in IC 36-7-34-3).
- (ii) The business is a United States Department of Defense contractor.
- (iii) The business and the qualified military base have a mutually beneficial relationship evidenced by a memorandum of understanding between the business and the United States Department of Defense.

(E) In the case of a business that uses the services or commodities in a qualified military base enhancement area established under IC 36-7-34-4(2), the business must satisfy at least one (1) of the following criteria:

- (i) The business is a participant in the technology transfer program conducted by the qualified military base (as defined in IC 36-7-34-3).
- (ii) The business and the qualified military base have a mutually beneficial relationship evidenced by a memorandum of understanding between the business and the qualified military base (as defined in IC 36-7-34-3).

However, this subdivision does not apply to a business that substantially reduces or ceases its operations at another location in Indiana in order to relocate its operations in an area described in this subdivision, unless the department determines that the business had existing operations in the area described in this subdivision and that the operations relocated to the area are an expansion of the business's operations in the area.

(5) The power subsidiary or person sells services or commodities that:

- (A) are referred to in subsection (b); and
- (B) qualify as home energy (as defined in IC 6-2.5-5-16.5);

to a person who acquires the services or commodities after June 30, 2006, and before July 1, 2009, through home energy assistance (as defined in IC 6-2.5-5-16.5).

SECTION 2. IC 6-3-2-2.5, AS AMENDED BY P.L.113-2010,

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1 SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JANUARY 1, 2012]: Sec. 2.5. (a) This section applies to a resident
3 person.

4 (b) Resident persons are entitled to a net operating loss deduction.
5 The amount of the deduction taken in a taxable year may not exceed
6 the taxpayer's unused Indiana net operating losses ~~carried back or~~
7 carried over to that year. **A taxpayer is not entitled to carryback any**
8 **net operating losses after December 31, 2011.**

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

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

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

17 (2) An Indiana net operating loss includes a net operating loss that
18 arises when the modifications required by IC 6-3-1-3.5 exceed the
19 taxpayer's federal adjusted gross income (as defined in Section 62
20 of the Internal Revenue Code) for the taxable year in which the
21 Indiana net operating loss is determined.

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

27 (f) ~~Carrybacks and~~ Carryovers shall be determined under this
28 subsection as follows:

29 ~~(1) An Indiana net operating loss shall be an Indiana net operating~~
30 ~~loss carryback to each of the carryback years preceding the~~
31 ~~taxable year of the loss:~~

32 ~~(2) (1) An Indiana net operating loss shall be an Indiana net~~
33 ~~operating loss carryover to each of the carryover years following~~
34 ~~the taxable year of the loss.~~

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

39 ~~(A) for which a taxpayer made an election to use five (5) years~~
40 ~~instead of two (2) years under Section 172(b)(1)(H) of the~~
41 ~~Internal Revenue Code; two (2) years shall be used instead of~~
42 ~~five (5) years; or~~

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1 ~~(B)~~ that is a qualified disaster loss for which the taxpayer
2 elected to have the net operating loss carryback period with
3 respect to the loss year determined without regard to Section
4 172(b)(1)(J) of the Internal Revenue Code; five (5) years shall
5 be used.

6 ~~(4)~~ (2) Carryover years shall be determined by reference to the
7 number of years allowed for carrying over net operating losses
8 under Section 172(b) of the Internal Revenue Code.

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

14 (g) The entire amount of the Indiana net operating loss for any
15 taxable year shall be carried to the earliest of the taxable years to which
16 (as determined under subsection (f)) the loss may be carried. The
17 amount of the Indiana net operating loss remaining after the deduction
18 is taken under this section in a taxable year may be ~~carried back or~~
19 carried over as provided in subsection (f). The amount of the Indiana
20 net operating loss ~~carried back or~~ carried over from year to year shall
21 be reduced to the extent that the Indiana net operating loss ~~carryback~~
22 or carryover is used by the taxpayer to obtain a deduction in a taxable
23 year until the occurrence of the earlier of the following:

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

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

28 SECTION 3. IC 6-3-2-2.6, AS AMENDED BY P.L.113-2010,
29 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
30 JANUARY 1, 2012]: Sec. 2.6. (a) This section applies to a corporation
31 or a nonresident person.

32 (b) Corporations and nonresident persons are entitled to a net
33 operating loss deduction. The amount of the deduction taken in a
34 taxable year may not exceed the taxpayer's unused Indiana net
35 operating losses ~~carried back or~~ carried over to that year. **A taxpayer**
36 **is not entitled to carryback any net operating losses after**
37 **December 31, 2011.**

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

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

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1 (1) The modifications that are to be applied are those
 2 modifications required under IC 6-3-1-3.5 for the same taxable
 3 year in which each net operating loss was incurred.
 4 (2) The amount of the taxpayer's net operating loss that is derived
 5 from sources within Indiana shall be determined in the same
 6 manner that the amount of the taxpayer's adjusted income derived
 7 from sources within Indiana is determined under section 2 of this
 8 chapter for the same taxable year during which each loss was
 9 incurred.
 10 (3) An Indiana net operating loss includes a net operating loss that
 11 arises when the modifications required by IC 6-3-1-3.5 exceed the
 12 taxpayer's federal taxable income (as defined in Section 63 of the
 13 Internal Revenue Code), if the taxpayer is a corporation, or when
 14 the modifications required by IC 6-3-1-3.5 exceed the taxpayer's
 15 federal adjusted gross income (as defined by Section 62 of the
 16 Internal Revenue Code), if the taxpayer is a nonresident person,
 17 for the taxable year in which the Indiana net operating loss is
 18 determined.
 19 (e) Subject to the limitations contained in subsection (g), an Indiana
 20 net operating loss ~~carryback or~~ carryover shall be available as a
 21 deduction from the taxpayer's adjusted gross income derived from
 22 sources within Indiana (as defined in section 2 of this chapter) in the
 23 ~~carryback or~~ carryover year provided in subsection (f).
 24 (f) ~~Carrybacks and~~ Carryovers shall be determined under this
 25 subsection as follows:
 26 (1) ~~An Indiana net operating loss shall be an Indiana net operating~~
 27 ~~loss carryback to each of the carryback years preceding the~~
 28 ~~taxable year of the loss.~~
 29 (2) (1) An Indiana net operating loss shall be an Indiana net
 30 operating loss carryover to each of the carryover years following
 31 the taxable year of the loss.
 32 (3) ~~Carryback years shall be determined by reference to the~~
 33 ~~number of years allowed for carrying back a net operating loss~~
 34 ~~under Section 172(b) of the Internal Revenue Code. However;~~
 35 ~~with respect to the carryback period for a net operating loss:~~
 36 (A) for which a taxpayer made an election to use five (5) years
 37 instead of two (2) years under Section 172(b)(1)(H) of the
 38 Internal Revenue Code; two (2) years shall be used instead of
 39 five (5) years; or
 40 (B) that is a qualified disaster loss for which the taxpayer
 41 elected to have the net operating loss carryback period with
 42 respect to the loss year determined without regard to Section

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1 ~~172(b)(1)(J) of the Internal Revenue Code, five (5) years shall~~
2 ~~be used:~~

3 ~~(4) (2) Carryover years shall be determined by reference to the~~
4 ~~number of years allowed for carrying over net operating losses~~
5 ~~under Section 172(b) of the Internal Revenue Code.~~

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

11 (g) The entire amount of the Indiana net operating loss for any
12 taxable year shall be carried to the earliest of the taxable years to which
13 (as determined under subsection (f)) the loss may be carried. The
14 amount of the Indiana net operating loss remaining after the deduction
15 is taken under this section in a taxable year may be ~~carried back or~~
16 carried over as provided in subsection (f). The amount of the Indiana
17 net operating loss ~~carried back or~~ carried over from year to year shall
18 be reduced to the extent that the Indiana net operating loss ~~carryback~~
19 or carryover is used by the taxpayer to obtain a deduction in a taxable
20 year until the occurrence of the earlier of the following:

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

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

25 (h) An Indiana net operating loss deduction determined under this
26 section shall be allowed notwithstanding the fact that in the year the
27 taxpayer incurred the net operating loss the taxpayer was not subject to
28 the tax imposed under section 1 of this chapter because the taxpayer
29 was:

30 (1) a life insurance company (as defined in Section 816(a) of the
31 Internal Revenue Code); or

32 (2) an insurance company subject to tax under Section 831 of the
33 Internal Revenue Code.

34 (i) In the case of a life insurance company that claims an operations
35 loss deduction under Section 810 of the Internal Revenue Code, this
36 section shall be applied by:

37 (1) substituting the corresponding provisions of Section 810 of the
38 Internal Revenue Code in place of references to Section 172 of
39 the Internal Revenue Code; and

40 (2) substituting life insurance company taxable income (as
41 defined in Section 801 the Internal Revenue Code) in place of
42 references to taxable income (as defined in Section 63 of the

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1 Internal Revenue Code).
2 (j) For purposes of an amended return filed to carry back an Indiana
3 net operating loss:
4 (1) the term "due date of the return", as used in IC 6-8.1-9-1(a)(1);
5 means the due date of the return for the taxable year in which the
6 net operating loss was incurred; and
7 (2) the term "date the payment was due", as used in
8 IC 6-8.1-9-2(c), means the due date of the return for the taxable
9 year in which the net operating loss was incurred.

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