

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1001 be amended to read as follows:

- 1 Page 144, between lines 44 and 45, begin a new paragraph and
2 insert:
3 "SECTION 80. IC 6-3-2-2.5, AS AMENDED BY P.L.113-2010,
4 SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JANUARY 1, 2012]: Sec. 2.5. (a) This section applies to a resident
6 person.
7 (b) Resident persons are entitled to a net operating loss deduction.
8 The amount of the deduction taken in a taxable year may not exceed
9 the taxpayer's unused Indiana net operating losses ~~carried back or~~
10 carried over to that year. **A taxpayer is not entitled to carry back any**
11 **net operating losses after December 31, 2011.**
12 (c) An Indiana net operating loss equals the taxpayer's federal net
13 operating loss for a taxable year as calculated under Section 172 of the
14 Internal Revenue Code, adjusted for the modifications required by
15 IC 6-3-1-3.5.
16 (d) The following provisions apply for purposes of subsection (c):
17 (1) The modifications that are to be applied are those
18 modifications required under IC 6-3-1-3.5 for the same taxable
19 year in which each net operating loss was incurred.
20 (2) An Indiana net operating loss includes a net operating loss that
21 arises when the modifications required by IC 6-3-1-3.5 exceed the
22 taxpayer's federal adjusted gross income (as defined in Section 62
23 of the Internal Revenue Code) for the taxable year in which the
24 Indiana net operating loss is determined.
25 (e) Subject to the limitations contained in subsection (g), an Indiana
26 net operating loss ~~carryback or~~ carryover shall be available as a
27 deduction from the taxpayer's adjusted gross income (as defined in
28 IC 6-3-1-3.5) in the ~~carryback or~~ carryover year provided in subsection
29 (f).
30 (f) ~~Carrybacks and~~ Carryovers shall be determined under this

1 subsection as follows:

2 ~~(1)~~ An Indiana net operating loss shall be an Indiana net operating
 3 loss carryback to each of the carryback years preceding the
 4 taxable year of the loss.

5 ~~(2)~~ **(1)** An Indiana net operating loss shall be an Indiana net
 6 operating loss carryover to each of the carryover years following
 7 the taxable year of the loss.

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

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

16 ~~(B)~~ that is a qualified disaster loss for which the taxpayer
 17 elected to have the net operating loss carryback period with
 18 respect to the loss year determined without regard to Section
 19 172(b)(1)(J) of the Internal Revenue Code; five (5) years shall
 20 be used:

21 ~~(4)~~ **(2)** Carryover years shall be determined by reference to the
 22 number of years allowed for carrying over net operating losses
 23 under Section 172(b) of the Internal Revenue Code.

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

29 (g) The entire amount of the Indiana net operating loss for any
 30 taxable year shall be carried to the earliest of the taxable years to which
 31 (as determined under subsection (f)) the loss may be carried. The
 32 amount of the Indiana net operating loss remaining after the deduction
 33 is taken under this section in a taxable year may be ~~carried back or~~
 34 carried over as provided in subsection (f). The amount of the Indiana
 35 net operating loss ~~carried back or~~ carried over from year to year shall
 36 be reduced to the extent that the Indiana net operating loss ~~carryback~~
 37 ~~or~~ carryover is used by the taxpayer to obtain a deduction in a taxable
 38 year until the occurrence of the earlier of the following:

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

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

43 SECTION 81. IC 6-3-2-2.6, AS AMENDED BY P.L.113-2010,
 44 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 45 JANUARY 1, 2012]: Sec. 2.6. (a) This section applies to a corporation
 46 or a nonresident person.

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

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

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

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

15 (2) The amount of the taxpayer's net operating loss that is derived
 16 from sources within Indiana shall be determined in the same
 17 manner that the amount of the taxpayer's adjusted income derived
 18 from sources within Indiana is determined under section 2 of this
 19 chapter for the same taxable year during which each loss was
 20 incurred.

21 (3) An Indiana net operating loss includes a net operating loss that
 22 arises when the modifications required by IC 6-3-1-3.5 exceed the
 23 taxpayer's federal taxable income (as defined in Section 63 of the
 24 Internal Revenue Code), if the taxpayer is a corporation, or when
 25 the modifications required by IC 6-3-1-3.5 exceed the taxpayer's
 26 federal adjusted gross income (as defined by Section 62 of the
 27 Internal Revenue Code), if the taxpayer is a nonresident person,
 28 for the taxable year in which the Indiana net operating loss is
 29 determined.

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

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

37 ~~(1) An Indiana net operating loss shall be an Indiana net operating~~
 38 ~~loss carryback to each of the carryback years preceding the~~
 39 ~~taxable year of the loss:~~

40 ~~(2) (1)~~ (1) An Indiana net operating loss shall be an Indiana net
 41 operating loss carryover to each of the carryover years following
 42 the taxable year of the loss.

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

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

5 (B) that is a qualified disaster loss for which the taxpayer
 6 elected to have the net operating loss carryback period with
 7 respect to the loss year determined without regard to Section
 8 172(b)(1)(J) of the Internal Revenue Code; five (5) years shall
 9 be used.

10 ~~(4)~~ (2) Carryover years shall be determined by reference to the
 11 number of years allowed for carrying over net operating losses
 12 under Section 172(b) of the Internal Revenue Code.

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

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

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

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

32 (h) An Indiana net operating loss deduction determined under this
 33 section shall be allowed notwithstanding the fact that in the year the
 34 taxpayer incurred the net operating loss the taxpayer was not subject to
 35 the tax imposed under section 1 of this chapter because the taxpayer
 36 was:

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

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

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

44 (1) substituting the corresponding provisions of Section 810 of the
 45 Internal Revenue Code in place of references to Section 172 of
 46 the Internal Revenue Code; and

- 1 (2) substituting life insurance company taxable income (as
2 defined in Section 801 the Internal Revenue Code) in place of
3 references to taxable income (as defined in Section 63 of the
4 Internal Revenue Code).
- 5 (j) For purposes of an amended return filed to carry back an Indiana
6 net operating loss:
- 7 (1) the term "due date of the return", as used in IC 6-8.1-9-1(a)(1);
8 means the due date of the return for the taxable year in which the
9 net operating loss was incurred; and
- 10 (2) the term "date the payment was due", as used in
11 IC 6-8.1-9-2(c); means the due date of the return for the taxable
12 year in which the net operating loss was incurred."
- 13 Renumber all SECTIONS consecutively.
(Reference is to EHB 1001 as printed April 19, 2011.)

Senator BRODEN