



February 18, 2011

SENATE BILL No. 589

DIGEST OF SB 589 (Updated February 15, 2011 11:18 am - DI 58)

Citations Affected: IC 2-5; IC 5-28; IC 6-2.5; IC 6-3; IC 6-3.1; IC 6-5.5; IC 6-8; IC 6-8.1; IC 20-19; IC 21-18; IC 22-4.1; IC 33-26; IC 36-7; IC 36-7.6; noncode.

Synopsis: Economic development and state tax matters. Makes the following changes to economic development programs and sales tax and income tax provisions: (1) Makes the economic development study committee a four year committee that expires December 31, 2014, with a membership including legislative and nonlegislative members. Requires the study committee to determine methods for eliminating or reducing the personal property tax statewide and the appropriateness of allowing local government the option of eliminating or abating personal property tax for new investment and economic development purposes. (2) Requires the Indiana economic development corporation (IEDC) to collaborate with local economic development organizations and submit an annual report to the study committee regarding collaboration. (3) Requires the state board of education, the commission for higher education, and the department of workforce development to work together to develop entrepreneurship education programs for elementary and secondary education, higher education, and individuals in the work force. (4) Requires the IEDC to conduct a statewide study to determine specific economic sectors that should be emphasized by the state and by local economic development or
(Continued next page)

Effective: Upon passage; January 1, 2011 (retroactive); July 1, 2011; January 1, 2012; July 1, 2012.

Hershman, Charbonneau, Alting

January 20, 2011, read first time and referred to Committee on Tax and Fiscal Policy.
February 17, 2011, amended, reported favorably — Do Pass.

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organizations within geographic regions in Indiana. (5) Permits the department of state revenue to negotiate a collection allowance for the collection of sales taxes by an out-of-state seller. (6) Provides that a claim for a sales tax refund must be filed within one year if the claim is based on the predominant use of electrical energy, natural or artificial gas, water, steam, and steam heat by certain businesses or based on the sales tax exemption for these services or commodities. (7) Decreases the corporate income tax rate from 8.5% to 6.5% effective July 1, 2012. (8) Provides an income tax deduction for corporations that repatriate profits from controlled foreign corporations. (9) Provides that the adjusted gross income tax and financial institutions tax (for credit unions and investment companies) apply to interest on state and local bonds issued by a state other than Indiana or issued by a political subdivision of such a state. (10) Clarifies the attribution rules applicable to business income and sales receipts from certain intangibles under the adjusted gross income tax. Provides that the department of state revenue must contract for advice and recommendations concerning the proper distribution, apportionment, or allocation of income and deductions among two or more businesses. (11) Eliminates the carryback of net operating losses under the adjusted gross income tax. (12) Expires the teacher summer employment income tax credit on January 1, 2012. (13) Specifies that a maternity home tax credit may not be awarded for the providing, after December 31, 2011, of a temporary residence. (14) Provides that a community revitalization enhancement district tax credit may not be awarded for a qualified investment made after December 31, 2011. (15) Provides that a tax credit may not be awarded for making available, after December 31, 2011, a health benefit plan. (16) Provides that a small employer qualified wellness program tax credit may not be awarded for costs incurred after December 31, 2011. (17) Extends the time in which a person must file an amended Indiana adjusted gross income tax return to reflect modifications made in a federal income tax return. (18) Prohibits the department of state revenue from taking an action to collect a delinquent tax until the later of the time to file a tax appeal has expired or a final decision is made in a tax appeal. Expands the power of the tax court. Makes related changes to obtaining injunctions against the collection of a tax. (19) Permits local governments to pledge revenue from the county adjusted gross income tax and the county economic development income tax for redevelopment financing. (20) Requires higher education institutions to expand technology and innovation commercialization programs. (21) Provides that if a county or a municipality becomes a member of a regional development authority (other than the northwest Indiana regional development authority) after June 30, 2011, and before July 1, 2013, the amount of money that must be transferred annually by the county or municipality is equal to the amount that would be distributed to the county or the municipality from a county economic development income tax rate of 0.025%. Removes outdated individual income tax adjustments.

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February 18, 2011

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. 589

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

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

- 1 SECTION 1. IC 2-5-31 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2011]:
4 **Chapter 31. Interim Study Committee on Economic**
5 **Development**
6 **Sec. 1. The interim study committee on economic development**
7 **is established.**
8 **Sec. 2. (a) The committee consists of the following members:**
9 (1) **Two (2) members of the senate, who must be affiliated**
10 **with different political parties, appointed by the president pro**
11 **tempore of the senate.**
12 (2) **Two (2) members of the house of representatives, who**
13 **must be affiliated with different political parties, appointed by**
14 **the speaker of the house of representatives.**
15 (3) **The chief executive officer of the Indiana economic**

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development corporation (or the chief executive officer's designee).

(4) The following twelve (12) members appointed as follows:

(A) The following four (4) members appointed by the governor, not more than two (2) of whom may be affiliated with the same political party and at least one (1) of whom must be a woman who is an owner of a women's business enterprise (as defined in IC 4-13-16.5-1.3) that is certified under IC 4-13-16.5 or a member of a minority group (as defined in IC 4-13-16.5-1) who is an owner of a minority business enterprise (as defined in IC 4-13-16.5-1) that is certified under IC 4-13-16.5:

- (i) One (1) member to represent large businesses.
- (ii) One (1) member to represent small businesses.
- (iii) One (1) member to represent banking and finance.
- (iv) One (1) member to represent labor interests.

(B) The following four (4) members appointed by the president pro tempore of the senate, not more than two (2) of whom may be affiliated with the same political party:

- (i) One (1) member to represent higher education.
- (ii) One (1) member to represent local economic development organizations and officials.
- (iii) One (1) member to represent cities.
- (iv) One (1) member to represent counties.

(C) The following four (4) members appointed by the speaker of the house of representatives, not more than two (2) of whom may be affiliated with the same political party:

- (i) One (1) member to represent agricultural interests.
- (ii) One (1) member to represent the public at large.
- (iii) One (1) member to represent kindergarten through grade 12 education.
- (iv) One (1) member to represent quality of life issues.

(b) The president pro tempore of the senate shall appoint one (1) of the members appointed by the president under subsection (a)(1) as a co-chair of the committee. The speaker of the house of representatives shall appoint one (1) of the members appointed by the speaker under subsection (a)(2) as a co-chair of the committee.

(c) The affirmative votes of a majority of the voting members appointed to the committee are required for the committee to take action on any measure, including final reports.

Sec. 3. The committee shall study the following during each

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interim:

- (1) Best practices in state and local economic development policies and activities.**
- (2) The use and effectiveness of tax credits and deductions.**
- (3) Whether there are any specific sectors of the economy for which Indiana might have comparative advantages over other states.**
- (4) The extent to which Indiana's tax laws encourage business investment, and any improvements that might be made to Indiana's tax laws.**
- (5) The extent to which Indiana's education systems support economic development.**
- (6) The benefits of existing community revitalization enhancement districts and possible new community revitalization enhancement districts as an economic development tool.**
- (7) Methods for eliminating or reducing the personal property tax statewide and the appropriateness of allowing local government the option of eliminating or abating personal property tax for new investment and economic development purposes.**
- (8) Any other issue assigned to the committee by the legislative council or as directed by the committee's co-chairs.**

Sec. 4. The committee shall issue a final report before November 1 each year to the legislative council containing any findings and recommendations of the committee. The report must be in an electronic format under IC 5-14-6.

Sec. 5. Except as otherwise provided in this chapter, the committee shall operate under the policies governing study committees adopted by the legislative council.

Sec. 6. This chapter expires December 31, 2014.

SECTION 2. IC 5-28-6-1, AS ADDED BY P.L.4-2005, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. The corporation shall do the following:

- (1) Create and regularly update a strategic economic development plan based on a statewide study to determine specific economic sectors that should be emphasized by the state and by local economic development organizations within geographic regions in Indiana.**
- (2) Establish strategic benchmarks and performance measures.**
- (3) Monitor and report on Indiana's economic performance.**
- (4) Market Indiana to businesses worldwide.**

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- 1 (5) Assist Indiana businesses that want to grow.
- 2 (6) Solicit funding from the private sector for selected initiatives.
- 3 (7) Provide for the orderly economic development and growth of
- 4 Indiana.
- 5 (8) Establish and coordinate the operation of programs commonly
- 6 available to all citizens of Indiana to implement a strategic plan
- 7 for the state's economic development and enhance the general
- 8 welfare.
- 9 (9) Evaluate and analyze the state's economy to determine the
- 10 direction of future public and private actions, and report and make
- 11 recommendations to the general assembly in an electronic format
- 12 under IC 5-14-6 with respect to the state's economy.

13 SECTION 3. IC 5-28-6-2, AS AMENDED BY P.L.120-2008,
 14 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2011]: Sec. 2. (a) The corporation shall develop and promote
 16 programs designed to make the best use of Indiana resources to ensure
 17 a balanced economy and continuing economic growth for Indiana, and,
 18 for those purposes, may do the following:

- 19 (1) Cooperate with federal, state, and local governments and
- 20 agencies in the coordination of programs to make the best use of
- 21 Indiana resources, **based on a statewide study to determine**
- 22 **specific economic sectors that should be emphasized by the**
- 23 **state and by local economic development organizations within**
- 24 **geographic regions in Indiana.**
- 25 (2) Receive and expend funds, grants, gifts, and contributions of
- 26 money, property, labor, interest accrued from loans made by the
- 27 corporation, and other things of value from public and private
- 28 sources, including grants from agencies and instrumentalities of
- 29 the state and the federal government. The corporation:
- 30 (A) may accept federal grants for providing planning
- 31 assistance, making grants, or providing other services or
- 32 functions necessary to political subdivisions, planning
- 33 commissions, or other public or private organizations;
- 34 (B) shall administer these grants in accordance with the terms
- 35 of the grants; and
- 36 (C) may contract with political subdivisions, planning
- 37 commissions, or other public or private organizations to carry
- 38 out the purposes for which the grants were made.
- 39 (3) Direct that assistance, information, and advice regarding the
- 40 duties and functions of the corporation be given to the corporation
- 41 by an officer, agent, or employee of the executive branch of the
- 42 state. The head of any other state department or agency may

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- 1 assign one (1) or more of the department's or agency's employees
- 2 to the corporation on a temporary basis or may direct a division
- 3 or an agency under the department's or agency's supervision and
- 4 control to make a special study or survey requested by the
- 5 corporation.
- 6 (b) The corporation shall perform the following duties:
- 7 (1) Develop and implement industrial development programs to
- 8 encourage expansion of existing industrial, commercial, and
- 9 business facilities in Indiana and to encourage new industrial,
- 10 commercial, and business locations in Indiana.
- 11 (2) Assist businesses and industries in acquiring, improving, and
- 12 developing overseas markets and encourage international plant
- 13 locations in Indiana. The corporation, with the approval of the
- 14 governor, may establish foreign offices to assist in this function.
- 15 (3) Promote the growth of minority business enterprises by doing
- 16 the following:
- 17 (A) Mobilizing and coordinating the activities, resources, and
- 18 efforts of governmental and private agencies, businesses, trade
- 19 associations, institutions, and individuals.
- 20 (B) Assisting minority businesses in obtaining governmental
- 21 or commercial financing for expansion or establishment of
- 22 new businesses or individual development projects.
- 23 (C) Aiding minority businesses in procuring contracts from
- 24 governmental or private sources, or both.
- 25 (D) Providing technical, managerial, and counseling assistance
- 26 to minority business enterprises.
- 27 (4) Assist the office of the lieutenant governor in:
- 28 (A) community economic development planning;
- 29 (B) implementation of programs designed to further
- 30 community economic development; and
- 31 (C) the development and promotion of Indiana's tourist
- 32 resources.
- 33 (5) Assist the secretary of agriculture and rural development in
- 34 promoting and marketing of Indiana's agricultural products and
- 35 provide assistance to the director of the Indiana state department
- 36 of agriculture.
- 37 (6) With the approval of the governor, implement federal
- 38 programs delegated to the state to carry out the purposes of this
- 39 article.
- 40 (7) Promote the growth of small businesses by doing the
- 41 following:
- 42 (A) Assisting small businesses in obtaining and preparing the

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- 1 permits required to conduct business in Indiana.
- 2 (B) Serving as a liaison between small businesses and state
- 3 agencies.
- 4 (C) Providing information concerning business assistance
- 5 programs available through government agencies and private
- 6 sources.
- 7 (8) Establish a public information page on its current Internet site
- 8 on the world wide web. The page must provide the following:
- 9 (A) By program, cumulative information on the total amount
- 10 of incentives awarded, the total number of companies that
- 11 received the incentives and were assisted in a year, and the
- 12 names and addresses of those companies.
- 13 (B) A mechanism on the page whereby the public may request
- 14 further information online about specific programs or
- 15 incentives awarded.
- 16 (C) A mechanism for the public to receive an electronic
- 17 response.
- 18 (c) The corporation may do the following:
- 19 (1) Disseminate information concerning the industrial,
- 20 commercial, governmental, educational, cultural, recreational,
- 21 agricultural, and other advantages of Indiana.
- 22 (2) Plan, direct, and conduct research activities.
- 23 (3) Assist in community economic development planning and the
- 24 implementation of programs designed to further community
- 25 economic development.
- 26 SECTION 4. IC 5-28-11-10 IS ADDED TO THE INDIANA CODE
- 27 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 28 1, 2011]: **Sec. 10. The corporation shall collaborate with local**
- 29 **economic development organizations throughout Indiana. Before**
- 30 **August 1 each year through 2014, the corporation shall submit a**
- 31 **written report to the interim study committee on economic**
- 32 **development established by IC 2-5-31-1, indicating how the**
- 33 **corporation has collaborated with local economic development**
- 34 **organizations during the previous state fiscal year, including**
- 35 **details and analysis of each collaboration.**
- 36 SECTION 5. IC 6-2.5-5-5.1 IS AMENDED TO READ AS
- 37 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5.1. (a) As used in this
- 38 section, "tangible personal property" includes electrical energy, natural
- 39 or artificial gas, water, steam, and steam heat.
- 40 (b) Transactions involving tangible personal property are exempt
- 41 from the state gross retail tax if the person acquiring the property
- 42 acquires it for direct consumption as a material to be consumed in the

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1 direct production of other tangible personal property in the person's
2 business of manufacturing, processing, refining, repairing, mining,
3 agriculture, horticulture, floriculture, or arboriculture. This exemption
4 includes transactions involving acquisitions of tangible personal
5 property used in commercial printing.

6 **(c) A refund claim based on the exemption provided by this**
7 **section for electrical energy, natural or artificial gas, water, steam,**
8 **and steam heat may not cover transactions that occur more than**
9 **twelve (12) months before the date of the refund claim.**

10 SECTION 6. IC 6-2.5-11-10, AS AMENDED BY P.L.113-2010,
11 SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 UPON PASSAGE]: Sec. 10. (a) A certified service provider is the
13 agent of a seller, with whom the certified service provider has
14 contracted, for the collection and remittance of sales and use taxes. As
15 the seller's agent, the certified service provider is liable for sales and
16 use tax due each member state on all sales transactions it processes for
17 the seller except as set out in this section. A seller that contracts with
18 a certified service provider is not liable to the state for sales or use tax
19 due on transactions processed by the certified service provider unless
20 the seller misrepresented the type of items it sells or committed fraud.
21 In the absence of probable cause to believe that the seller has
22 committed fraud or made a material misrepresentation, the seller is not
23 subject to audit on the transactions processed by the certified service
24 provider. A seller is subject to audit for transactions not processed by
25 the certified service provider. The member states acting jointly may
26 perform a system check of the seller and review the seller's procedures
27 to determine if the certified service provider's system is functioning
28 properly and the extent to which the seller's transactions are being
29 processed by the certified service provider.

30 (b) A person that provides a certified automated system is
31 responsible for the proper functioning of that system and is liable to the
32 state for underpayments of tax attributable to errors in the functioning
33 of the certified automated system. A seller that uses a certified
34 automated system remains responsible and is liable to the state for
35 reporting and remitting tax.

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

40 (d) A certified service provider or a seller using a certified
41 automated system that obtains a certification or taxability matrix from
42 the department is not liable for sales or use tax collection errors that

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1 result from reliance on the department's certification or taxability
 2 matrix. If the department determines that an item or transaction is
 3 incorrectly classified as to the taxability of the item or transaction, the
 4 department shall notify the certified service provider or the seller using
 5 a certified automated system of the incorrect classification. The
 6 certified service provider or the seller using a certified automated
 7 system must revise the incorrect classification within ten (10) days
 8 after receiving notice of the determination from the department. If the
 9 classification error is not corrected within ten (10) days after receiving
 10 the department's notice, the certified service provider or the seller using
 11 a certified automated system is liable for failure to collect the correct
 12 amount of sales or use tax due and owing.

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

17 (1) the seller collected the tax at the immediately preceding
 18 effective rate; and

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

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

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

28 **(g) After June 30, 2011, the department may negotiate with a**
 29 **certified service provider or seller to provide a monetary allowance**
 30 **that is greater than the allowance provided in IC 6-2.5-6-10 for the**
 31 **collection of gross retail tax or use tax on sales, leases, and rentals**
 32 **of goods or services made in a member state or a jurisdiction that**
 33 **is not a member state. A monetary allowance permitted under this**
 34 **subsection may not exceed ten percent (10%) of the gross retail tax**
 35 **or use tax collected from a sale, lease, or rental. The department**
 36 **may adopt emergency rules under IC 4-22-2-37.1 and shall adopt**
 37 **rules under IC 4-22-2 to establish standards for granting monetary**
 38 **allowances under this subsection. The rules must provide that the**
 39 **permitted monetary allowance is a negotiated rate based on:**

40 (1) the collection costs of the certified service provider or
 41 seller;

42 (2) the volume and value to the state of sales, leases, or rentals

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- 1 **processed by a certified service provider or seller;**
- 2 **(3) the administrative and legal costs that the state would**
- 3 **otherwise incur to collect gross retail taxes or use taxes for**
- 4 **these sales, leases, or rentals absent a negotiated monetary**
- 5 **allowance; and**
- 6 **(4) the likelihood of collecting gross retail taxes or use taxes**
- 7 **on these sales, leases, or rentals absent a negotiated monetary**
- 8 **allowance.**

9 SECTION 7. IC 6-3-1-3.5, AS AMENDED BY P.L.182-2009(ss),
 10 SECTION 186, IS AMENDED TO READ AS FOLLOWS
 11 [EFFECTIVE JANUARY 1, 2012]: Sec. 3.5. When used in this article,
 12 the term "adjusted gross income" shall mean the following:

13 (a) In the case of all individuals, "adjusted gross income" (as
 14 defined in Section 62 of the Internal Revenue Code), modified as
 15 follows:

- 16 (1) Subtract income that is exempt from taxation under this article
 17 by the Constitution and statutes of the United States.
- 18 (2) Add an amount equal to any deduction or deductions allowed
 19 or allowable pursuant to Section 62 of the Internal Revenue Code
 20 for taxes based on or measured by income and levied at the state
 21 level by any state of the United States.
- 22 (3) Subtract one thousand dollars (\$1,000), or in the case of a
 23 joint return filed by a husband and wife, subtract for each spouse
 24 one thousand dollars (\$1,000).
- 25 (4) Subtract one thousand dollars (\$1,000) for:
 - 26 (A) each of the exemptions provided by Section 151(c) of the
 27 Internal Revenue Code;
 - 28 (B) each additional amount allowable under Section 63(f) of
 29 the Internal Revenue Code; and
 - 30 (C) the spouse of the taxpayer if a separate return is made by
 31 the taxpayer and if the spouse, for the calendar year in which
 32 the taxable year of the taxpayer begins, has no gross income
 33 and is not the dependent of another taxpayer.
- 34 (5) Subtract:
 - 35 (A) ~~for taxable years beginning after December 31, 2004~~; one
 36 thousand five hundred dollars (\$1,500) for each of the
 37 exemptions allowed under Section 151(c)(1)(B) of the Internal
 38 Revenue Code (as effective January 1, 2004); and
 - 39 (B) five hundred dollars (\$500) for each additional amount
 40 allowable under Section 63(f)(1) of the Internal Revenue Code
 41 if the adjusted gross income of the taxpayer, or the taxpayer
 42 and the taxpayer's spouse in the case of a joint return, is less

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than forty thousand dollars (\$40,000).
This amount is in addition to the amount subtracted under subdivision (4).
(6) Subtract an amount equal to the lesser of:
 (A) that part of the individual's adjusted gross income (as defined in Section 62 of the Internal Revenue Code) for that taxable year that is subject to a tax that is imposed by a political subdivision of another state and that is imposed on or measured by income; or
 (B) two thousand dollars (\$2,000).
(7) Add an amount equal to the total capital gain portion of a lump sum distribution (as defined in Section 402(e)(4)(D) of the Internal Revenue Code) if the lump sum distribution is received by the individual during the taxable year and if the capital gain portion of the distribution is taxed in the manner provided in Section 402 of the Internal Revenue Code.
(8) Subtract any amounts included in federal adjusted gross income under Section 111 of the Internal Revenue Code as a recovery of items previously deducted as an itemized deduction from adjusted gross income.
(9) Subtract any amounts included in federal adjusted gross income under the Internal Revenue Code which amounts were received by the individual as supplemental railroad retirement annuities under 45 U.S.C. 231 and which are not deductible under subdivision (1).
~~(10) Add an amount equal to the deduction allowed under Section 221 of the Internal Revenue Code for married couples filing joint returns if the taxable year began before January 1, 1987.~~
~~(11) Add an amount equal to the interest excluded from federal gross income by the individual for the taxable year under Section 128 of the Internal Revenue Code if the taxable year began before January 1, 1985.~~
~~(12)~~ **(10)** Subtract an amount equal to the amount of federal Social Security and Railroad Retirement benefits included in a taxpayer's federal gross income by Section 86 of the Internal Revenue Code.
~~(13)~~ **(11)** In the case of a nonresident taxpayer or a resident taxpayer residing in Indiana for a period of less than the taxpayer's entire taxable year, the total amount of the deductions allowed pursuant to subdivisions (3), (4), (5), and (6) shall be reduced to an amount which bears the same ratio to the total as the taxpayer's income taxable in Indiana bears to the taxpayer's total income.

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- 1 ~~(14)~~ **(12)** In the case of an individual who is a recipient of
- 2 assistance under IC 12-10-6-1, IC 12-10-6-2.1, IC 12-15-2-2, or
- 3 IC 12-15-7, subtract an amount equal to that portion of the
- 4 individual's adjusted gross income with respect to which the
- 5 individual is not allowed under federal law to retain an amount to
- 6 pay state and local income taxes.
- 7 ~~(15)~~ **(13)** In the case of an eligible individual, subtract the amount
- 8 of a Holocaust victim's settlement payment included in the
- 9 individual's federal adjusted gross income.
- 10 ~~(16)~~ For taxable years beginning after December 31, 1999; **(14)**
- 11 Subtract an amount equal to the portion of any premiums paid
- 12 during the taxable year by the taxpayer for a qualified long term
- 13 care policy (as defined in IC 12-15-39.6-5) for the taxpayer or the
- 14 taxpayer's spouse, or both.
- 15 ~~(17)~~ **(15)** Subtract an amount equal to the lesser of:
- 16 (A) for a taxable year:
- 17 (i) including any part of 2004, the amount determined under
- 18 subsection (f); and
- 19 (ii) beginning after December 31, 2004, two thousand five
- 20 hundred dollars (\$2,500); or
- 21 (B) the amount of property taxes that are paid during the
- 22 taxable year in Indiana by the individual on the individual's
- 23 principal place of residence.
- 24 ~~(18)~~ **(16)** Subtract an amount equal to the amount of a September
- 25 11 terrorist attack settlement payment included in the individual's
- 26 federal adjusted gross income.
- 27 ~~(19)~~ **(17)** Add or subtract the amount necessary to make the
- 28 adjusted gross income of any taxpayer that owns property for
- 29 which bonus depreciation was allowed in the current taxable year
- 30 or in an earlier taxable year equal to the amount of adjusted gross
- 31 income that would have been computed had an election not been
- 32 made under Section 168(k) of the Internal Revenue Code to apply
- 33 bonus depreciation to the property in the year that it was placed
- 34 in service.
- 35 ~~(20)~~ **(18)** Add an amount equal to any deduction allowed under
- 36 Section 172 of the Internal Revenue Code.
- 37 ~~(21)~~ **(19)** Add or subtract the amount necessary to make the
- 38 adjusted gross income of any taxpayer that placed Section 179
- 39 property (as defined in Section 179 of the Internal Revenue Code)
- 40 in service in the current taxable year or in an earlier taxable year
- 41 equal to the amount of adjusted gross income that would have
- 42 been computed had an election for federal income tax purposes

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- 1 not been made for the year in which the property was placed in
 2 service to take deductions under Section 179 of the Internal
 3 Revenue Code in a total amount exceeding twenty-five thousand
 4 dollars (\$25,000).
 5 ~~(22)~~ **(20)** Add an amount equal to the amount that a taxpayer
 6 claimed as a deduction for domestic production activities for the
 7 taxable year under Section 199 of the Internal Revenue Code for
 8 federal income tax purposes.
 9 ~~(23)~~ **(21)** Subtract an amount equal to the amount of the taxpayer's
 10 qualified military income that was not excluded from the
 11 taxpayer's gross income for federal income tax purposes under
 12 Section 112 of the Internal Revenue Code.
 13 ~~(24)~~ **(22)** Subtract income that is:
 14 (A) exempt from taxation under IC 6-3-2-21.7; and
 15 (B) included in the individual's federal adjusted gross income
 16 under the Internal Revenue Code.
 17 ~~(25)~~ **(23)** Subtract any amount of a credit (including an advance
 18 refund of the credit) that is provided to an individual under 26
 19 U.S.C. 6428 (federal Economic Stimulus Act of 2008) and
 20 included in the individual's federal adjusted gross income.
 21 ~~(26)~~ **(24)** Add any amount of unemployment compensation
 22 excluded from federal gross income, as defined in Section 61 of
 23 the Internal Revenue Code, under Section 85(c) of the Internal
 24 Revenue Code.
 25 ~~(27)~~ **(25)** Add the amount excluded from gross income under
 26 Section 108(a)(1)(e) of the Internal Revenue Code for the
 27 discharge of debt on a qualified principal residence.
 28 ~~(28)~~ **(26)** Add an amount equal to any income not included in
 29 gross income as a result of the deferral of income arising from
 30 business indebtedness discharged in connection with the
 31 reacquisition after December 31, 2008, and before January 1,
 32 2011, of an applicable debt instrument, as provided in Section
 33 108(i) of the Internal Revenue Code. Subtract the amount
 34 necessary from the adjusted gross income of any taxpayer that
 35 added an amount to adjusted gross income in a previous year to
 36 offset the amount included in federal gross income as a result of
 37 the deferral of income arising from business indebtedness
 38 discharged in connection with the reacquisition after December
 39 31, 2008, and before January 1, 2011, of an applicable debt
 40 instrument, as provided in Section 108(i) of the Internal Revenue
 41 Code.
 42 ~~(29)~~ **(27)** Add the amount necessary to make the adjusted gross

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income of any taxpayer that placed qualified restaurant property in service during the taxable year and that was classified as 15-year property under Section 168(e)(3)(E)(v) of the Internal Revenue Code equal to the amount of adjusted gross income that would have been computed had the classification not applied to the property in the year that it was placed in service.

~~(30)~~ **(28)** Add the amount necessary to make the adjusted gross income of any taxpayer that placed qualified retail improvement property in service during the taxable year and that was classified as 15-year property under Section 168(e)(3)(E)(ix) of the Internal Revenue Code equal to the amount of adjusted gross income that would have been computed had the classification not applied to the property in the year that it was placed in service.

~~(31)~~ **(29)** Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that claimed the special allowance for qualified disaster assistance property under Section 168(n) of the Internal Revenue Code equal to the amount of adjusted gross income that would have been computed had the special allowance not been claimed for the property.

~~(32)~~ **(30)** Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that made an election under Section 179C of the Internal Revenue Code to expense costs for qualified refinery property equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year.

~~(33)~~ **(31)** Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that made an election under Section 181 of the Internal Revenue Code to expense costs for a qualified film or television production equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year.

~~(34)~~ **(32)** Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that treated a loss from the sale or exchange of preferred stock in:

- (A) the Federal National Mortgage Association, established under the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.); or
- (B) the Federal Home Loan Mortgage Corporation, established under the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.);

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1 as an ordinary loss under Section 301 of the Emergency
2 Economic Stabilization Act of 2008 in the current taxable year or
3 in an earlier taxable year equal to the amount of adjusted gross
4 income that would have been computed had the loss not been
5 treated as an ordinary loss.

6 **(33) Add the amount excluded from federal gross income**
7 **under Section 103 of the Internal Revenue Code for interest**
8 **received on an obligation of a state other than Indiana or a**
9 **political subdivision of such a state.**

10 (b) In the case of corporations, the same as "taxable income" (as
11 defined in Section 63 of the Internal Revenue Code) adjusted as
12 follows:

13 (1) Subtract income that is exempt from taxation under this article
14 by the Constitution and statutes of the United States.

15 (2) Add an amount equal to any deduction or deductions allowed
16 or allowable pursuant to Section 170 of the Internal Revenue
17 Code.

18 (3) Add an amount equal to any deduction or deductions allowed
19 or allowable pursuant to Section 63 of the Internal Revenue Code
20 for taxes based on or measured by income and levied at the state
21 level by any state of the United States.

22 (4) Subtract an amount equal to the amount included in the
23 corporation's taxable income under Section 78 of the Internal
24 Revenue Code.

25 (5) Add or subtract the amount necessary to make the adjusted
26 gross income of any taxpayer that owns property for which bonus
27 depreciation was allowed in the current taxable year or in an
28 earlier taxable year equal to the amount of adjusted gross income
29 that would have been computed had an election not been made
30 under Section 168(k) of the Internal Revenue Code to apply bonus
31 depreciation to the property in the year that it was placed in
32 service.

33 (6) Add an amount equal to any deduction allowed under Section
34 172 of the Internal Revenue Code.

35 (7) Add or subtract the amount necessary to make the adjusted
36 gross income of any taxpayer that placed Section 179 property (as
37 defined in Section 179 of the Internal Revenue Code) in service
38 in the current taxable year or in an earlier taxable year equal to
39 the amount of adjusted gross income that would have been
40 computed had an election for federal income tax purposes not
41 been made for the year in which the property was placed in
42 service to take deductions under Section 179 of the Internal

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- 1 Revenue Code in a total amount exceeding twenty-five thousand
- 2 dollars (\$25,000).
- 3 (8) Add an amount equal to the amount that a taxpayer claimed as
- 4 a deduction for domestic production activities for the taxable year
- 5 under Section 199 of the Internal Revenue Code for federal
- 6 income tax purposes.
- 7 (9) Add to the extent required by IC 6-3-2-20 the amount of
- 8 intangible expenses (as defined in IC 6-3-2-20) and any directly
- 9 related intangible interest expenses (as defined in IC 6-3-2-20) for
- 10 the taxable year that reduced the corporation's taxable income (as
- 11 defined in Section 63 of the Internal Revenue Code) for federal
- 12 income tax purposes.
- 13 (10) Add an amount equal to any deduction for dividends paid (as
- 14 defined in Section 561 of the Internal Revenue Code) to
- 15 shareholders of a captive real estate investment trust (as defined
- 16 in section 34.5 of this chapter).
- 17 (11) Subtract income that is:
- 18 (A) exempt from taxation under IC 6-3-2-21.7; and
- 19 (B) included in the corporation's taxable income under the
- 20 Internal Revenue Code.
- 21 (12) Add an amount equal to any income not included in gross
- 22 income as a result of the deferral of income arising from business
- 23 indebtedness discharged in connection with the reacquisition after
- 24 December 31, 2008, and before January 1, 2011, of an applicable
- 25 debt instrument, as provided in Section 108(i) of the Internal
- 26 Revenue Code. Subtract from the adjusted gross income of any
- 27 taxpayer that added an amount to adjusted gross income in a
- 28 previous year the amount necessary to offset the amount included
- 29 in federal gross income as a result of the deferral of income
- 30 arising from business indebtedness discharged in connection with
- 31 the reacquisition after December 31, 2008, and before January 1,
- 32 2011, of an applicable debt instrument, as provided in Section
- 33 108(i) of the Internal Revenue Code.
- 34 (13) Add the amount necessary to make the adjusted gross income
- 35 of any taxpayer that placed qualified restaurant property in service
- 36 during the taxable year and that was classified as 15-year property
- 37 under Section 168(e)(3)(E)(v) of the Internal Revenue Code equal
- 38 to the amount of adjusted gross income that would have been
- 39 computed had the classification not applied to the property in the
- 40 year that it was placed in service.
- 41 (14) Add the amount necessary to make the adjusted gross income
- 42 of any taxpayer that placed qualified retail improvement property

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1 in service during the taxable year and that was classified as
 2 15-year property under Section 168(e)(3)(E)(ix) of the Internal
 3 Revenue Code equal to the amount of adjusted gross income that
 4 would have been computed had the classification not applied to
 5 the property in the year that it was placed in service.

6 (15) Add or subtract the amount necessary to make the adjusted
 7 gross income of any taxpayer that claimed the special allowance
 8 for qualified disaster assistance property under Section 168(n) of
 9 the Internal Revenue Code equal to the amount of adjusted gross
 10 income that would have been computed had the special allowance
 11 not been claimed for the property.

12 (16) Add or subtract the amount necessary to make the adjusted
 13 gross income of any taxpayer that made an election under Section
 14 179C of the Internal Revenue Code to expense costs for qualified
 15 refinery property equal to the amount of adjusted gross income
 16 that would have been computed had an election for federal
 17 income tax purposes not been made for the year.

18 (17) Add or subtract the amount necessary to make the adjusted
 19 gross income of any taxpayer that made an election under Section
 20 181 of the Internal Revenue Code to expense costs for a qualified
 21 film or television production equal to the amount of adjusted
 22 gross income that would have been computed had an election for
 23 federal income tax purposes not been made for the year.

24 (18) Add or subtract the amount necessary to make the adjusted
 25 gross income of any taxpayer that treated a loss from the sale or
 26 exchange of preferred stock in:

27 (A) the Federal National Mortgage Association, established
 28 under the Federal National Mortgage Association Charter Act
 29 (12 U.S.C. 1716 et seq.); or

30 (B) the Federal Home Loan Mortgage Corporation, established
 31 under the Federal Home Loan Mortgage Corporation Act (12
 32 U.S.C. 1451 et seq.);

33 as an ordinary loss under Section 301 of the Emergency
 34 Economic Stabilization Act of 2008 in the current taxable year or
 35 in an earlier taxable year equal to the amount of adjusted gross
 36 income that would have been computed had the loss not been
 37 treated as an ordinary loss.

38 **(19) Add the amount excluded from federal gross income**
 39 **under Section 103 of the Internal Revenue Code for interest**
 40 **received on an obligation of a state other than Indiana or a**
 41 **political subdivision of such a state.**

42 (c) In the case of life insurance companies (as defined in Section

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1 816(a) of the Internal Revenue Code) that are organized under Indiana
 2 law, the same as "life insurance company taxable income" (as defined
 3 in Section 801 of the Internal Revenue Code), adjusted as follows:
 4 (1) Subtract income that is exempt from taxation under this article
 5 by the Constitution and statutes of the United States.
 6 (2) Add an amount equal to any deduction allowed or allowable
 7 under Section 170 of the Internal Revenue Code.
 8 (3) Add an amount equal to a deduction allowed or allowable
 9 under Section 805 or Section 831(c) of the Internal Revenue Code
 10 for taxes based on or measured by income and levied at the state
 11 level by any state.
 12 (4) Subtract an amount equal to the amount included in the
 13 company's taxable income under Section 78 of the Internal
 14 Revenue Code.
 15 (5) Add or subtract the amount necessary to make the adjusted
 16 gross income of any taxpayer that owns property for which bonus
 17 depreciation was allowed in the current taxable year or in an
 18 earlier taxable year equal to the amount of adjusted gross income
 19 that would have been computed had an election not been made
 20 under Section 168(k) of the Internal Revenue Code to apply bonus
 21 depreciation to the property in the year that it was placed in
 22 service.
 23 (6) Add an amount equal to any deduction allowed under Section
 24 172 or Section 810 of the Internal Revenue Code.
 25 (7) Add or subtract the amount necessary to make the adjusted
 26 gross income of any taxpayer that placed Section 179 property (as
 27 defined in Section 179 of the Internal Revenue Code) in service
 28 in the current taxable year or in an earlier taxable year equal to
 29 the amount of adjusted gross income that would have been
 30 computed had an election for federal income tax purposes not
 31 been made for the year in which the property was placed in
 32 service to take deductions under Section 179 of the Internal
 33 Revenue Code in a total amount exceeding twenty-five thousand
 34 dollars (\$25,000).
 35 (8) Add an amount equal to the amount that a taxpayer claimed as
 36 a deduction for domestic production activities for the taxable year
 37 under Section 199 of the Internal Revenue Code for federal
 38 income tax purposes.
 39 (9) Subtract income that is:
 40 (A) exempt from taxation under IC 6-3-2-21.7; and
 41 (B) included in the insurance company's taxable income under
 42 the Internal Revenue Code.

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- 1 (10) Add an amount equal to any income not included in gross
- 2 income as a result of the deferral of income arising from business
- 3 indebtedness discharged in connection with the reacquisition after
- 4 December 31, 2008, and before January 1, 2011, of an applicable
- 5 debt instrument, as provided in Section 108(i) of the Internal
- 6 Revenue Code. Subtract from the adjusted gross income of any
- 7 taxpayer that added an amount to adjusted gross income in a
- 8 previous year the amount necessary to offset the amount included
- 9 in federal gross income as a result of the deferral of income
- 10 arising from business indebtedness discharged in connection with
- 11 the reacquisition after December 31, 2008, and before January 1,
- 12 2011, of an applicable debt instrument, as provided in Section
- 13 108(i) of the Internal Revenue Code.
- 14 (11) Add the amount necessary to make the adjusted gross income
- 15 of any taxpayer that placed qualified restaurant property in service
- 16 during the taxable year and that was classified as 15-year property
- 17 under Section 168(e)(3)(E)(v) of the Internal Revenue Code equal
- 18 to the amount of adjusted gross income that would have been
- 19 computed had the classification not applied to the property in the
- 20 year that it was placed in service.
- 21 (12) Add the amount necessary to make the adjusted gross income
- 22 of any taxpayer that placed qualified retail improvement property
- 23 in service during the taxable year and that was classified as
- 24 15-year property under Section 168(e)(3)(E)(ix) of the Internal
- 25 Revenue Code equal to the amount of adjusted gross income that
- 26 would have been computed had the classification not applied to
- 27 the property in the year that it was placed in service.
- 28 (13) Add or subtract the amount necessary to make the adjusted
- 29 gross income of any taxpayer that claimed the special allowance
- 30 for qualified disaster assistance property under Section 168(n) of
- 31 the Internal Revenue Code equal to the amount of adjusted gross
- 32 income that would have been computed had the special allowance
- 33 not been claimed for the property.
- 34 (14) Add or subtract the amount necessary to make the adjusted
- 35 gross income of any taxpayer that made an election under Section
- 36 179C of the Internal Revenue Code to expense costs for qualified
- 37 refinery property equal to the amount of adjusted gross income
- 38 that would have been computed had an election for federal
- 39 income tax purposes not been made for the year.
- 40 (15) Add or subtract the amount necessary to make the adjusted
- 41 gross income of any taxpayer that made an election under Section
- 42 181 of the Internal Revenue Code to expense costs for a qualified

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film or television production equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year.

(16) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that treated a loss from the sale or exchange of preferred stock in:

(A) the Federal National Mortgage Association, established under the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.); or

(B) the Federal Home Loan Mortgage Corporation, established under the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.);

as an ordinary loss under Section 301 of the Emergency Economic Stabilization Act of 2008 in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had the loss not been treated as an ordinary loss.

(17) Add an amount equal to any exempt insurance income under Section 953(e) of the Internal Revenue Code that is active financing income under Subpart F of Subtitle A, Chapter 1, Subchapter N of the Internal Revenue Code.

(18) Add the amount excluded from federal gross income under Section 103 of the Internal Revenue Code for interest received on an obligation of a state other than Indiana or a political subdivision of such a state.

(d) In the case of insurance companies subject to tax under Section 831 of the Internal Revenue Code and organized under Indiana law, the same as "taxable income" (as defined in Section 832 of the Internal Revenue Code), adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction allowed or allowable under Section 170 of the Internal Revenue Code.

(3) Add an amount equal to a deduction allowed or allowable under Section 805 or Section 831(c) of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state.

(4) Subtract an amount equal to the amount included in the company's taxable income under Section 78 of the Internal Revenue Code.

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus

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depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(6) Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code.

(7) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding twenty-five thousand dollars (\$25,000).

(8) Add an amount equal to the amount that a taxpayer claimed as a deduction for domestic production activities for the taxable year under Section 199 of the Internal Revenue Code for federal income tax purposes.

(9) Subtract income that is:

(A) exempt from taxation under IC 6-3-2-21.7; and

(B) included in the insurance company's taxable income under the Internal Revenue Code.

(10) Add an amount equal to any income not included in gross income as a result of the deferral of income arising from business indebtedness discharged in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument, as provided in Section 108(i) of the Internal Revenue Code. Subtract from the adjusted gross income of any taxpayer that added an amount to adjusted gross income in a previous year the amount necessary to offset the amount included in federal gross income as a result of the deferral of income arising from business indebtedness discharged in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument, as provided in Section 108(i) of the Internal Revenue Code.

(11) Add the amount necessary to make the adjusted gross income of any taxpayer that placed qualified restaurant property in service during the taxable year and that was classified as 15-year property

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under Section 168(e)(3)(E)(v) of the Internal Revenue Code equal to the amount of adjusted gross income that would have been computed had the classification not applied to the property in the year that it was placed in service.

(12) Add the amount necessary to make the adjusted gross income of any taxpayer that placed qualified retail improvement property in service during the taxable year and that was classified as 15-year property under Section 168(e)(3)(E)(ix) of the Internal Revenue Code equal to the amount of adjusted gross income that would have been computed had the classification not applied to the property in the year that it was placed in service.

(13) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that claimed the special allowance for qualified disaster assistance property under Section 168(n) of the Internal Revenue Code equal to the amount of adjusted gross income that would have been computed had the special allowance not been claimed for the property.

(14) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that made an election under Section 179C of the Internal Revenue Code to expense costs for qualified refinery property equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year.

(15) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that made an election under Section 181 of the Internal Revenue Code to expense costs for a qualified film or television production equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year.

(16) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that treated a loss from the sale or exchange of preferred stock in:

(A) the Federal National Mortgage Association, established under the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.); or

(B) the Federal Home Loan Mortgage Corporation, established under the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.);

as an ordinary loss under Section 301 of the Emergency Economic Stabilization Act of 2008 in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had the loss not been

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1 treated as an ordinary loss.

2 (17) Add an amount equal to any exempt insurance income under

3 Section 953(e) of the Internal Revenue Code that is active

4 financing income under Subpart F of Subtitle A, Chapter 1,

5 Subchapter N of the Internal Revenue Code.

6 **(18) Add the amount excluded from federal gross income**

7 **under Section 103 of the Internal Revenue Code for interest**

8 **received on an obligation of a state other than Indiana or a**

9 **political subdivision of such a state.**

10 (e) In the case of trusts and estates, "taxable income" (as defined for

11 trusts and estates in Section 641(b) of the Internal Revenue Code)

12 adjusted as follows:

13 (1) Subtract income that is exempt from taxation under this article

14 by the Constitution and statutes of the United States.

15 (2) Subtract an amount equal to the amount of a September 11

16 terrorist attack settlement payment included in the federal

17 adjusted gross income of the estate of a victim of the September

18 11 terrorist attack or a trust to the extent the trust benefits a victim

19 of the September 11 terrorist attack.

20 (3) Add or subtract the amount necessary to make the adjusted

21 gross income of any taxpayer that owns property for which bonus

22 depreciation was allowed in the current taxable year or in an

23 earlier taxable year equal to the amount of adjusted gross income

24 that would have been computed had an election not been made

25 under Section 168(k) of the Internal Revenue Code to apply bonus

26 depreciation to the property in the year that it was placed in

27 service.

28 (4) Add an amount equal to any deduction allowed under Section

29 172 of the Internal Revenue Code.

30 (5) Add or subtract the amount necessary to make the adjusted

31 gross income of any taxpayer that placed Section 179 property (as

32 defined in Section 179 of the Internal Revenue Code) in service

33 in the current taxable year or in an earlier taxable year equal to

34 the amount of adjusted gross income that would have been

35 computed had an election for federal income tax purposes not

36 been made for the year in which the property was placed in

37 service to take deductions under Section 179 of the Internal

38 Revenue Code in a total amount exceeding twenty-five thousand

39 dollars (\$25,000).

40 (6) Add an amount equal to the amount that a taxpayer claimed as

41 a deduction for domestic production activities for the taxable year

42 under Section 199 of the Internal Revenue Code for federal

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- 1 income tax purposes.
- 2 (7) Subtract income that is:
- 3 (A) exempt from taxation under IC 6-3-2-21.7; and
- 4 (B) included in the taxpayer's taxable income under the
- 5 Internal Revenue Code.
- 6 (8) Add an amount equal to any income not included in gross
- 7 income as a result of the deferral of income arising from business
- 8 indebtedness discharged in connection with the reacquisition after
- 9 December 31, 2008, and before January 1, 2011, of an applicable
- 10 debt instrument, as provided in Section 108(i) of the Internal
- 11 Revenue Code. Subtract from the adjusted gross income of any
- 12 taxpayer that added an amount to adjusted gross income in a
- 13 previous year the amount necessary to offset the amount included
- 14 in federal gross income as a result of the deferral of income
- 15 arising from business indebtedness discharged in connection with
- 16 the reacquisition after December 31, 2008, and before January 1,
- 17 2011, of an applicable debt instrument, as provided in Section
- 18 108(i) of the Internal Revenue Code.
- 19 (9) Add the amount necessary to make the adjusted gross income
- 20 of any taxpayer that placed qualified restaurant property in service
- 21 during the taxable year and that was classified as 15-year property
- 22 under Section 168(e)(3)(E)(v) of the Internal Revenue Code equal
- 23 to the amount of adjusted gross income that would have been
- 24 computed had the classification not applied to the property in the
- 25 year that it was placed in service.
- 26 (10) Add the amount necessary to make the adjusted gross income
- 27 of any taxpayer that placed qualified retail improvement property
- 28 in service during the taxable year and that was classified as
- 29 15-year property under Section 168(e)(3)(E)(ix) of the Internal
- 30 Revenue Code equal to the amount of adjusted gross income that
- 31 would have been computed had the classification not applied to
- 32 the property in the year that it was placed in service.
- 33 (11) Add or subtract the amount necessary to make the adjusted
- 34 gross income of any taxpayer that claimed the special allowance
- 35 for qualified disaster assistance property under Section 168(n) of
- 36 the Internal Revenue Code equal to the amount of adjusted gross
- 37 income that would have been computed had the special allowance
- 38 not been claimed for the property.
- 39 (12) Add or subtract the amount necessary to make the adjusted
- 40 gross income of any taxpayer that made an election under Section
- 41 179C of the Internal Revenue Code to expense costs for qualified
- 42 refinery property equal to the amount of adjusted gross income

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1 that would have been computed had an election for federal
2 income tax purposes not been made for the year.

3 (13) Add or subtract the amount necessary to make the adjusted
4 gross income of any taxpayer that made an election under Section
5 181 of the Internal Revenue Code to expense costs for a qualified
6 film or television production equal to the amount of adjusted
7 gross income that would have been computed had an election for
8 federal income tax purposes not been made for the year.

9 (14) Add or subtract the amount necessary to make the adjusted
10 gross income of any taxpayer that treated a loss from the sale or
11 exchange of preferred stock in:

12 (A) the Federal National Mortgage Association, established
13 under the Federal National Mortgage Association Charter Act
14 (12 U.S.C. 1716 et seq.); or

15 (B) the Federal Home Loan Mortgage Corporation, established
16 under the Federal Home Loan Mortgage Corporation Act (12
17 U.S.C. 1451 et seq.);

18 as an ordinary loss under Section 301 of the Emergency
19 Economic Stabilization Act of 2008 in the current taxable year or
20 in an earlier taxable year equal to the amount of adjusted gross
21 income that would have been computed had the loss not been
22 treated as an ordinary loss.

23 (15) Add the amount excluded from gross income under Section
24 108(a)(1)(e) of the Internal Revenue Code for the discharge of
25 debt on a qualified principal residence.

26 **(16) Add the amount excluded from federal gross income**
27 **under Section 103 of the Internal Revenue Code for interest**
28 **received on an obligation of a state other than Indiana or a**
29 **political subdivision of such a state.**

30 (f) This subsection applies only to the extent that an individual paid
31 property taxes in 2004 that were imposed for the March 1, 2002,
32 assessment date or the January 15, 2003, assessment date. The
33 maximum amount of the deduction under subsection (a)(17) is equal
34 to the amount determined under STEP FIVE of the following formula:

35 STEP ONE: Determine the amount of property taxes that the
36 taxpayer paid after December 31, 2003, in the taxable year for
37 property taxes imposed for the March 1, 2002, assessment date
38 and the January 15, 2003, assessment date.

39 STEP TWO: Determine the amount of property taxes that the
40 taxpayer paid in the taxable year for the March 1, 2003,
41 assessment date and the January 15, 2004, assessment date.

42 STEP THREE: Determine the result of the STEP ONE amount

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1 ~~divided by the STEP TWO amount.~~
 2 STEP FOUR: Multiply the STEP THREE amount by two
 3 thousand five hundred dollars (\$2,500).
 4 STEP FIVE: Determine the sum of the STEP FOUR amount and
 5 two thousand five hundred dollars (\$2,500).

6 SECTION 8. IC 6-3-2-1 IS AMENDED TO READ AS FOLLOWS
 7 [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) Each taxable year, a tax at the
 8 rate of three and four-tenths percent (3.4%) of adjusted gross income
 9 is imposed upon the adjusted gross income of every resident person,
 10 and on that part of the adjusted gross income derived from sources
 11 within Indiana of every nonresident person.

12 (b) Except as provided in section 1.5 of this chapter, each taxable
 13 year, a tax at the rate of ~~eight and five-tenths percent (8.5%)~~ **six and**
 14 **five-tenths percent (6.5%)** of adjusted gross income is imposed on
 15 that part of the adjusted gross income derived from sources within
 16 Indiana of every corporation.

17 SECTION 9. IC 6-3-2-2, AS AMENDED BY P.L.182-2009(ss),
 18 SECTION 191, IS AMENDED TO READ AS FOLLOWS
 19 [EFFECTIVE JANUARY 1, 2011 (RETROACTIVE)]: Sec. 2. (a) With
 20 regard to corporations and nonresident persons, "adjusted gross income
 21 derived from sources within Indiana", for the purposes of this article,
 22 shall mean and include:

- 23 (1) income from real or tangible personal property located in this
- 24 state;
- 25 (2) income from doing business in this state;
- 26 (3) income from a trade or profession conducted in this state;
- 27 (4) compensation for labor or services rendered within this state;
- 28 and
- 29 (5) income from stocks, bonds, notes, bank deposits, patents,
- 30 copyrights, secret processes and formulas, good will, trademarks,
- 31 trade brands, franchises, and other intangible personal property ~~if~~
 32 ~~the receipt from the intangible is attributable to Indiana under~~
 33 ~~section 2.2 of this chapter:~~ **to the extent that the income is**
 34 **apportioned to Indiana under this section or if the income is**
 35 **allocated to Indiana or considered to be derived from sources**
 36 **within Indiana under this section.**

37 Income from a pass through entity shall be characterized in a manner
 38 consistent with the income's characterization for federal income tax
 39 purposes and shall be considered Indiana source income as if the
 40 person, corporation, or pass through entity that received the income had
 41 directly engaged in the income producing activity. Income that is
 42 derived from one (1) pass through entity and is considered to pass

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1 through to another pass through entity does not change these
 2 characteristics or attribution provisions. In the case of nonbusiness
 3 income described in subsection (g), only so much of such income as is
 4 allocated to this state under the provisions of subsections (h) through
 5 (k) shall be deemed to be derived from sources within Indiana. In the
 6 case of business income, only so much of such income as is
 7 apportioned to this state under the provision of subsection (b) shall be
 8 deemed to be derived from sources within the state of Indiana. In the
 9 case of compensation of a team member (as defined in section 2.7 of
 10 this chapter), only the portion of income determined to be Indiana
 11 income under section 2.7 of this chapter is considered derived from
 12 sources within Indiana. In the case of a corporation that is a life
 13 insurance company (as defined in Section 816(a) of the Internal
 14 Revenue Code) or an insurance company that is subject to tax under
 15 Section 831 of the Internal Revenue Code, only so much of the income
 16 as is apportioned to Indiana under subsection (r) is considered derived
 17 from sources within Indiana.

18 (b) Except as provided in subsection (l), if business income of a
 19 corporation or a nonresident person is derived from sources within the
 20 state of Indiana and from sources without the state of Indiana, the
 21 business income derived from sources within this state shall be
 22 determined by multiplying the business income derived from sources
 23 both within and without the state of Indiana by the following:

24 (1) For all taxable years that begin after December 31, 2006, and
 25 before January 1, 2008, a fraction. The:

26 (A) numerator of the fraction is the sum of the property factor
 27 plus the payroll factor plus the product of the sales factor
 28 multiplied by three (3); and

29 (B) denominator of the fraction is five (5).

30 (2) For all taxable years that begin after December 31, 2007, and
 31 before January 1, 2009, a fraction. The:

32 (A) numerator of the fraction is the property factor plus the
 33 payroll factor plus the product of the sales factor multiplied by
 34 four and sixty-seven hundredths (4.67); and

35 (B) denominator of the fraction is six and sixty-seven
 36 hundredths (6.67).

37 (3) For all taxable years beginning after December 31, 2008, and
 38 before January 1, 2010, a fraction. The:

39 (A) numerator of the fraction is the property factor plus the
 40 payroll factor plus the product of the sales factor multiplied by
 41 eight (8); and

42 (B) denominator of the fraction is ten (10).

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1 (4) For all taxable years beginning after December 31, 2009, and
2 before January 1, 2011, a fraction. The:

3 (A) numerator of the fraction is the property factor plus the
4 payroll factor plus the product of the sales factor multiplied by
5 eighteen (18); and

6 (B) denominator of the fraction is twenty (20).

7 (5) For all taxable years beginning after December 31, 2010, the
8 sales factor.

9 (c) The property factor is a fraction, the numerator of which is the
10 average value of the taxpayer's real and tangible personal property
11 owned or rented and used in this state during the taxable year and the
12 denominator of which is the average value of all the taxpayer's real and
13 tangible personal property owned or rented and used during the taxable
14 year. However, with respect to a foreign corporation, the denominator
15 does not include the average value of real or tangible personal property
16 owned or rented and used in a place that is outside the United States.
17 Property owned by the taxpayer is valued at its original cost. Property
18 rented by the taxpayer is valued at eight (8) times the net annual rental
19 rate. Net annual rental rate is the annual rental rate paid by the taxpayer
20 less any annual rental rate received by the taxpayer from subrentals.
21 The average of property shall be determined by averaging the values at
22 the beginning and ending of the taxable year, but the department may
23 require the averaging of monthly values during the taxable year if
24 reasonably required to reflect properly the average value of the
25 taxpayer's property.

26 (d) The payroll factor is a fraction, the numerator of which is the
27 total amount paid in this state during the taxable year by the taxpayer
28 for compensation, and the denominator of which is the total
29 compensation paid everywhere during the taxable year. However, with
30 respect to a foreign corporation, the denominator does not include
31 compensation paid in a place that is outside the United States.
32 Compensation is paid in this state if:

33 (1) the individual's service is performed entirely within the state;

34 (2) the individual's service is performed both within and without
35 this state, but the service performed without this state is incidental
36 to the individual's service within this state; or

37 (3) some of the service is performed in this state and:

38 (A) the base of operations or, if there is no base of operations,
39 the place from which the service is directed or controlled is in
40 this state; or

41 (B) the base of operations or the place from which the service
42 is directed or controlled is not in any state in which some part

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1 of the service is performed, but the individual is a resident of
2 this state.

3 (e) The sales factor is a fraction, the numerator of which is the total
4 sales of the taxpayer in this state during the taxable year, and the
5 denominator of which is the total sales of the taxpayer everywhere
6 during the taxable year. Sales include receipts from intangible property
7 and receipts from the sale or exchange of intangible property. However,
8 with respect to a foreign corporation, the denominator does not include
9 sales made in a place that is outside the United States. Receipts from
10 intangible personal property are derived from sources within Indiana
11 ~~if the receipts from the intangible personal property are attributable to~~
12 ~~Indiana under section 2-2 of this chapter: to the extent that the income~~
13 ~~from the receipts would be apportioned to Indiana under this~~
14 ~~section or if the income from the receipts would be allocated to~~
15 ~~Indiana or considered to be derived from sources within Indiana~~
16 ~~under this section.~~ Regardless of the f.o.b. point or other conditions of
17 the sale, sales of tangible personal property are in this state if:

18 (1) the property is delivered or shipped to a purchaser that is
19 within Indiana, other than the United States government; or

20 (2) the property is shipped from an office, a store, a warehouse, a
21 factory, or other place of storage in this state and:

22 (A) the purchaser is the United States government; or

23 (B) the taxpayer is not taxable in the state of the purchaser.

24 Gross receipts derived from commercial printing as described in
25 IC 6-2.5-1-10 shall be treated as sales of tangible personal property for
26 purposes of this chapter.

27 (f) Sales, other than receipts from intangible property covered by
28 subsection (e) and sales of tangible personal property, are in this state
29 if:

30 (1) the income-producing activity is performed in this state; or

31 (2) the income-producing activity is performed both within and
32 without this state and a greater proportion of the
33 income-producing activity is performed in this state than in any
34 other state, based on costs of performance.

35 (g) Rents and royalties from real or tangible personal property,
36 capital gains, interest, dividends, or patent or copyright royalties, to the
37 extent that they constitute nonbusiness income, shall be allocated as
38 provided in subsections (h) through (k).

39 (h)(1) Net rents and royalties from real property located in this state
40 are allocable to this state.

41 (2) Net rents and royalties from tangible personal property are
42 allocated to this state:

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(i) if and to the extent that the property is utilized in this state; or
(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year, and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(i)(1) Capital gains and losses from sales of real property located in this state are allocable to this state.

(2) Capital gains and losses from sales of tangible personal property are allocable to this state if:

- (i) the property had a situs in this state at the time of the sale; or
- (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(3) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(j) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(k)(1) Patent and copyright royalties are allocable to this state:

- (i) if and to the extent that the patent or copyright is utilized by the taxpayer in this state; or
- (ii) if and to the extent that the patent or copyright is utilized by the taxpayer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(2) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts

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1 from copyright royalties does not permit allocation to states or if
 2 the accounting procedures do not reflect states of utilization, the
 3 copyright is utilized in the state in which the taxpayer's
 4 commercial domicile is located.

5 (l) If the allocation and apportionment provisions of this article do
 6 not fairly represent the taxpayer's income derived from sources within
 7 the state of Indiana, the taxpayer may petition for or the department
 8 may require, in respect to all or any part of the taxpayer's business
 9 activity, if reasonable:

10 (1) separate accounting;

11 (2) for a taxable year beginning before January 1, 2011, the
 12 exclusion of any one (1) or more of the factors, except the sales
 13 factor;

14 (3) the inclusion of one (1) or more additional factors which will
 15 fairly represent the taxpayer's income derived from sources within
 16 the state of Indiana; or

17 (4) the employment of any other method to effectuate an equitable
 18 allocation and apportionment of the taxpayer's income.

19 (m) In the case of two (2) or more organizations, trades, or
 20 businesses owned or controlled directly or indirectly by the same
 21 interests, the department shall distribute, apportion, or allocate the
 22 income derived from sources within the state of Indiana between and
 23 among those organizations, trades, or businesses in order to fairly
 24 reflect and report the income derived from sources within the state of
 25 Indiana by various taxpayers, **considering the recommendations**
 26 **made under IC 6-8.1-3-10.**

27 (n) For purposes of allocation and apportionment of income under
 28 this article, a taxpayer is taxable in another state if:

29 (1) in that state the taxpayer is subject to a net income tax, a
 30 franchise tax measured by net income, a franchise tax for the
 31 privilege of doing business, or a corporate stock tax; or

32 (2) that state has jurisdiction to subject the taxpayer to a net
 33 income tax regardless of whether, in fact, the state does or does
 34 not.

35 (o) Notwithstanding subsections (l) and (m), the department may
 36 not, under any circumstances, require that income, deductions, and
 37 credits attributable to a taxpayer and another entity be reported in a
 38 combined income tax return for any taxable year, if the other entity is:

39 (1) a foreign corporation; or

40 (2) a corporation that is classified as a foreign operating
 41 corporation for the taxable year by section 2.4 of this chapter.

42 (p) Notwithstanding subsections (l) and (m), the department may not

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1 require that income, deductions, and credits attributable to a taxpayer
2 and another entity not described in subsection (o)(1) or (o)(2) be
3 reported in a combined income tax return for any taxable year, unless
4 the department is unable to fairly reflect the taxpayer's adjusted gross
5 income for the taxable year through use of other powers granted to the
6 department by subsections (l) and (m).

7 (q) Notwithstanding subsections (o) and (p), one (1) or more
8 taxpayers may petition the department under subsection (l) for
9 permission to file a combined income tax return for a taxable year. The
10 petition to file a combined income tax return must be completed and
11 filed with the department not more than thirty (30) days after the end
12 of the taxpayer's taxable year. A taxpayer filing a combined income tax
13 return must petition the department within thirty (30) days after the end
14 of the taxpayer's taxable year to discontinue filing a combined income
15 tax return.

16 (r) This subsection applies to a corporation that is a life insurance
17 company (as defined in Section 816(a) of the Internal Revenue Code)
18 or an insurance company that is subject to tax under Section 831 of the
19 Internal Revenue Code. The corporation's adjusted gross income that
20 is derived from sources within Indiana is determined by multiplying the
21 corporation's adjusted gross income by a fraction:

22 (1) the numerator of which is the direct premiums and annuity
23 considerations received during the taxable year for insurance
24 upon property or risks in the state; and

25 (2) the denominator of which is the direct premiums and annuity
26 considerations received during the taxable year for insurance
27 upon property or risks everywhere.

28 The term "direct premiums and annuity considerations" means the
29 gross premiums received from direct business as reported in the
30 corporation's annual statement filed with the department of insurance.

31 SECTION 10. IC 6-3-2-2.5, AS AMENDED BY P.L.113-2010,
32 SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
33 JANUARY 1, 2012]: Sec. 2.5. (a) This section applies to a resident
34 person.

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

40 (c) An Indiana net operating loss equals the taxpayer's federal net
41 operating loss for a taxable year as calculated under Section 172 of the
42 Internal Revenue Code, adjusted for the modifications required by

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IC 6-3-1-3.5.

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

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

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

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

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

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

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

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

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

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

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

~~(5) A taxpayer who makes an election under Section 172(b)(3) of the Internal Revenue Code to relinquish the carryback period with respect to a net operating loss for any taxable year shall be~~

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1 considered to have also relinquished the carryback of the Indiana
2 net operating loss for purposes of this section:

3 (g) The entire amount of the Indiana net operating loss for any
4 taxable year shall be carried to the earliest of the taxable years to which
5 (as determined under subsection (f)) the loss may be carried. The
6 amount of the Indiana net operating loss remaining after the deduction
7 is taken under this section in a taxable year may be ~~carried back or~~
8 carried over as provided in subsection (f). The amount of the Indiana
9 net operating loss ~~carried back or~~ carried over from year to year shall
10 be reduced to the extent that the Indiana net operating loss ~~carryback~~
11 or carryover is used by the taxpayer to obtain a deduction in a taxable
12 year until the occurrence of the earlier of the following:

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

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

17 SECTION 11. IC 6-3-2-2.6, AS AMENDED BY P.L.113-2010,
18 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JANUARY 1, 2012]: Sec. 2.6. (a) This section applies to a corporation
20 or a nonresident person.

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

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

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

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

35 (2) The amount of the taxpayer's net operating loss that is derived
36 from sources within Indiana shall be determined in the same
37 manner that the amount of the taxpayer's adjusted income derived
38 from sources within Indiana is determined under section 2 of this
39 chapter for the same taxable year during which each loss was
40 incurred.

41 (3) An Indiana net operating loss includes a net operating loss that
42 arises when the modifications required by IC 6-3-1-3.5 exceed the

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1 taxpayer's federal taxable income (as defined in Section 63 of the
 2 Internal Revenue Code), if the taxpayer is a corporation, or when
 3 the modifications required by IC 6-3-1-3.5 exceed the taxpayer's
 4 federal adjusted gross income (as defined by Section 62 of the
 5 Internal Revenue Code), if the taxpayer is a nonresident person,
 6 for the taxable year in which the Indiana net operating loss is
 7 determined.

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

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

15 ~~(1) An Indiana net operating loss shall be an Indiana net operating~~
 16 ~~loss carryback to each of the carryback years preceding the~~
 17 ~~taxable year of the loss.~~

18 ~~(2) (1) An Indiana net operating loss shall be an Indiana net~~
 19 ~~operating loss carryover to each of the carryover years following~~
 20 ~~the taxable year of the loss.~~

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

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

29 ~~(B) that is a qualified disaster loss for which the taxpayer~~
 30 ~~elected to have the net operating loss carryback period with~~
 31 ~~respect to the loss year determined without regard to Section~~
 32 ~~172(b)(1)(J) of the Internal Revenue Code; five (5) years shall~~
 33 ~~be used.~~

34 ~~(4) (2) Carryover years shall be determined by reference to the~~
 35 ~~number of years allowed for carrying over net operating losses~~
 36 ~~under Section 172(b) of the Internal Revenue Code.~~

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

42 (g) The entire amount of the Indiana net operating loss for any

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1 taxable year shall be carried to the earliest of the taxable years to which
 2 (as determined under subsection (f)) the loss may be carried. The
 3 amount of the Indiana net operating loss remaining after the deduction
 4 is taken under this section in a taxable year may be ~~carried back or~~
 5 carried over as provided in subsection (f). The amount of the Indiana
 6 net operating loss ~~carried back or~~ carried over from year to year shall
 7 be reduced to the extent that the Indiana net operating loss ~~carryback~~
 8 ~~or~~ carryover is used by the taxpayer to obtain a deduction in a taxable
 9 year until the occurrence of the earlier of the following:

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

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

14 (h) An Indiana net operating loss deduction determined under this
 15 section shall be allowed notwithstanding the fact that in the year the
 16 taxpayer incurred the net operating loss the taxpayer was not subject to
 17 the tax imposed under section 1 of this chapter because the taxpayer
 18 was:

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

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

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

26 (1) substituting the corresponding provisions of Section 810 of the
 27 Internal Revenue Code in place of references to Section 172 of
 28 the Internal Revenue Code; and

29 (2) substituting life insurance company taxable income (as
 30 defined in Section 801 the Internal Revenue Code) in place of
 31 references to taxable income (as defined in Section 63 of the
 32 Internal Revenue Code).

33 (j) For purposes of an amended return filed to carry back an Indiana
 34 net operating loss:

35 (1) the term "due date of the return", as used in IC 6-8.1-9-1(a)(1);
 36 means the due date of the return for the taxable year in which the
 37 net operating loss was incurred; and

38 (2) the term "date the payment was due", as used in
 39 IC 6-8.1-9-2(c); means the due date of the return for the taxable
 40 year in which the net operating loss was incurred.

41 SECTION 12. IC 6-3-2-22 IS ADDED TO THE INDIANA CODE
 42 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE

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JANUARY 1, 2012]: **Sec. 22. (a) If a taxpayer is a corporation that is a United States shareholder, the taxpayer may elect to deduct an amount equal to part of the cash dividends that are received during the taxable year by the shareholder from controlled foreign corporations. The amount of the deduction is the percentage amount approved by the Indiana economic development corporation established under IC 5-28-3. If, within the taxable year for which the election under this section is in effect, a United States shareholder receives a cash distribution from a controlled foreign corporation which is excluded from gross income under Section 959(a) of the Internal Revenue Code, the distribution shall be treated for purposes of this section as a cash dividend to the extent of any amount included in income by the United States shareholder under Section 951(a)(1)(A) of the Internal Revenue Code as a result of any cash dividend during such taxable year to:**

(1) the controlled foreign corporation from another controlled foreign corporation that is in a chain of ownership described in Section 958(a) of the Internal Revenue Code; or

(2) any other controlled foreign corporation in the chain of ownership, but only to the extent of cash distributions described in Section 959(b) of the Internal Revenue Code that are made during the taxable year to the controlled foreign corporation from which the United States shareholder received the distribution.

(b) The following apply to the amount of dividends taken into account under subsection (a):

(1) The amount of dividends taken into account under subsection (a) may not exceed the greater of:

(A) one million dollars (\$1,000,000);

(B) the amount shown on the applicable financial statement as earnings permanently reinvested outside the United States; or

(C) in the case of an applicable financial statement that fails to show a specific amount of earnings permanently reinvested outside the United States and that shows a specific amount of tax liability attributable to the earnings, the amount equal to the amount of the liability divided by eighty-five thousandths (0.085).

The amounts described in clauses (B) and (C) shall be treated as being zero (0) if there is no statement or the statement fails to show a specific amount of earnings or liability, whichever applies.

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(2) The amount of dividends taken into account under subsection (a) may not exceed the excess (if any) of the remainder of:

(A) the dividends received during the taxable year by the shareholder from controlled foreign corporations; minus

(B) the annual average for the base period years of:

(i) the dividends received during each base period year by the shareholder from controlled foreign corporations;

(ii) the amounts includable in the shareholder's gross income for each base period year under Section 951(a)(1)(B) of the Internal Revenue Code with respect to controlled foreign corporations; and

(iii) the amounts that would have been included for each base period year but for Section 959(a) of the Internal Revenue Code with respect to controlled foreign corporations.

The amount taken into account under item (iii) for any base period year may not include any amount that is not includable in gross income by reason of an amount described in item (ii) with respect to a prior taxable year.

Amounts described in clause (B) for any base period year must be the amounts shown on the most recent return filed for that year, except that amended returns filed after June 30, 2012, may not be taken into account.

(3) The amount of dividends that would (but for this subdivision) be taken into account under subsection (a) shall be reduced by the excess (if any) of:

(A) the amount of indebtedness of the controlled foreign corporation to any related person (as defined in Section 954(d)(3)) of the Internal Revenue Code as of the close of the taxable year for which the election under this section is in effect; minus

(B) the amount of indebtedness of the controlled foreign corporation to any related person (as so defined) as of December 31, 2012.

All controlled foreign corporations with respect to which the taxpayer is a United States shareholder shall be treated as one (1) controlled foreign corporation for purposes of this subdivision.

(4) Subsection (a) does not apply to any dividend received by a United States shareholder unless the amount of the dividend is invested in Indiana under a domestic reinvestment plan

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that:

(A) is approved by:

(i) the taxpayer's president, chief executive officer, or comparable official before the payment of the dividend and subsequently approved by the taxpayer's board of directors, management committee, executive committee, or similar body; and

(ii) the Indiana economic development corporation; and
(B) provides for the reinvestment of the dividend in Indiana (other than as payment for executive compensation), including as a source for the funding of worker hiring and training, infrastructure, research and development, capital investments, or the financial stabilization of the corporation for the purposes of job retention or creation.

(c) For purposes of this section, the following apply:

(1) "Applicable financial statement" refers, with respect to a United States shareholder, to the most recently audited financial statement (including notes and other documents which accompany such a statement) that includes the shareholder:

(A) that is certified on or before the date established by the Indiana economic development corporation for the corporation, as being prepared in accordance with generally accepted accounting principles; and

(B) that is used for the purposes of a statement or report:

- (i) to creditors;
- (ii) to shareholders; or
- (iii) for any other substantial nontax purpose.

In the case of a corporation required to file a financial statement with the United States Securities and Exchange Commission, the term means the most recent financial statement filed on or before the date established by the Indiana economic development corporation.

(2) "Base period years" means:

(A) the three (3) taxable years:

(i) that are among the five (5) most recent taxable years ending on or before the date established by the Indiana economic development corporation for the corporation; and

(ii) that are determined by disregarding one (1) taxable year for which the sum of the amounts described in

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subsection (b)(2)(B)(i), (b)(2)(B)(ii), and (b)(2)(B)(iii) is the largest and the one (1) taxable year for which the sum is the smallest.

(B) If the taxpayer has fewer than five (5) taxable years ending on or before the date established by the Indiana economic development corporation for the corporation, then instead of applying clause (A), the base period years include all the taxable years of the taxpayer ending on or before the date established by the Indiana economic development corporation for the corporation.

(C) With regard to mergers, acquisitions, spin-offs, or similar situations:

(i) Rules similar to the rules of subparagraphs (A) and (B) of Section 41(f)(3) of the Internal Revenue Code apply for purposes of this subdivision.

(ii) If there is a distribution to which Section 355 of the Internal Revenue Code (or so much of Section 356 of the Internal Revenue Code as relates to Section 355 of the Internal Revenue Code) applies during the five (5) year period referred to in clause (A)(i) and the controlled corporation (within the meaning of Section 355 of the Internal Revenue Code) is a United States shareholder, the controlled corporation shall be treated as being in existence during the period that the distributing corporation (within the meaning of Section 355 of the Internal Revenue Code) is in existence. In addition, for purposes of applying subsection (b)(2) to the controlled corporation and the distributing corporation, amounts described in subsection (b)(2)(B) that are received or includable by the distributing corporation or controlled corporation (whichever applies) before the distribution from a controlled foreign corporation shall be allocated between these corporations in proportion to their respective interests as United States shareholders of the controlled foreign corporation immediately after the distribution. However, this allocation does not apply if neither the controlled corporation nor the distributing corporation is a United States shareholder of the controlled foreign corporation immediately after the distribution.

(3) "Dividend" does not include amounts includable in gross income as a dividend under Section 78 of the Internal

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1 Revenue Code, Section 367 of the Internal Revenue Code, or
 2 Section 1248 of the Internal Revenue Code. However, in the
 3 case of a liquidation under Section 332 of the Internal
 4 Revenue Code to which Section 367(b) of the Internal
 5 Revenue Code applies, the exclusion does not apply to the
 6 extent the United States shareholder actually receives cash as
 7 part of the liquidation.

8 (4) A deduction is not allowed under any other law for any
 9 dividend for which a deduction is allowed under this section.

10 (5) With regard to controlled groups the following apply:

11 (A) All United States shareholders that are members of an
 12 affiliated group filing a consolidated return under Section
 13 1501 of the Internal Revenue Code shall be treated as one
 14 (1) United States shareholder.

15 (B) All corporations that are treated as a single employer
 16 under Section 52(a) of the Internal Revenue Code shall be
 17 limited to one (1) ceiling amount in subsection (b)(1)(A),
 18 and the amount shall be divided among these corporations
 19 as prescribed by the Indiana economic development
 20 corporation.

21 (C) If a financial statement is an applicable financial
 22 statement for more than one (1) United States shareholder,
 23 the amount applicable under subsection (b)(1)(B) or
 24 (b)(1)(C) shall be divided among these shareholders as
 25 prescribed by the Indiana economic development
 26 corporation.

27 (d) No other credit or deduction is allowed under any other law
 28 for the following:

29 (1) Any taxes paid or accrued (or treated as paid or accrued)
 30 with respect to the deductible part of:

31 (A) any dividend; or

32 (B) any amount described in subsection (a)(2) which is
 33 included in income under Section 951(a)(1)(A) of the
 34 Internal Revenue Code.

35 No deduction is allowed under this section for any tax for
 36 which credit is not allowable by reason of this subdivision.

37 (2) Expenses properly allocated and apportioned to the
 38 deductible part described in subdivision (1).

39 For purposes of this section, unless the taxpayer otherwise
 40 specifies, the deductible part of any dividend or other amount is the
 41 amount that bears the same ratio to the amount of the dividend or
 42 other amount as the amount allowed as a deduction under

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1 subsection (a) for the taxable year bears to the amount described
2 in subsection (b)(2)(A) for that year.

3 (e) A deduction under this section may not reduce the adjusted
4 gross income of any United States shareholder for any taxable year
5 to less than zero (0). The excess of the amount of dividends taken
6 into account under subsection (a) over the deduction allowed under
7 subsection (a) for these dividends for any taxable year may not be
8 taken into account in determining the amount of any net operating
9 loss deductible from adjusted gross income for the taxable year.

10 (f) A taxpayer may elect to apply this section to:

11 (1) the taxpayer's last taxable year that begins in the year the
12 deduction is approved by the Indiana economic development
13 corporation; or

14 (2) the taxpayer's first taxable year that begins in the year
15 after the year the deduction is approved by the Indiana
16 economic development corporation.

17 An election may be made for a taxable year only if it is made
18 before the due date (including extensions) for filing the return of
19 tax for that taxable year. An election may cover not more than two
20 (2) taxable years for any particular taxpayer.

21 SECTION 13. IC 6-3-4-6 IS AMENDED TO READ AS FOLLOWS
22 [EFFECTIVE JANUARY 1, 2011 (RETROACTIVE)]: Sec. 6. (a) Any
23 taxpayer, upon request by the department, shall furnish to the
24 department a true and correct copy of any tax return which ~~he~~ **the**
25 **taxpayer** has filed with the United States Internal Revenue Service
26 which copy shall be certified to by the taxpayer under penalties of
27 perjury.

28 (b) Each taxpayer shall notify the department of any modification
29 of:

30 (1) a federal income tax return filed by the taxpayer after January
31 1, 1978; or

32 (2) the taxpayer's federal income tax liability for a taxable year
33 which begins after December 31, 1977.

34 The taxpayer shall file the notice on the form prescribed by the
35 department within one hundred twenty (120) days after the
36 modification is made **if the modification was made before January**
37 **1, 2011, and one hundred eighty (180) days after the modification**
38 **is made if the modification is made after December 31, 2010.**

39 (c) If the federal modification results in a change in the taxpayer's
40 federal or Indiana adjusted gross income, the taxpayer shall file an
41 Indiana amended return within one hundred twenty (120) days after the
42 modification is made **if the modification was made before January**

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1 **1, 2011, and one hundred eighty (180) days after the modification**
 2 **is made if the modification is made after December 31, 2010.**

3 SECTION 14. IC 6-3.1-2-8 IS ADDED TO THE INDIANA CODE
 4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 5 1, 2011]: **Sec. 8. (a) A tax credit may not be awarded under this**
 6 **chapter after December 31, 2011.**

7 **(b) This chapter expires January 1, 2020.**

8 SECTION 15. IC 6-3.1-14-9 IS ADDED TO THE INDIANA CODE
 9 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 10 1, 2011]: **Sec. 9. (a) A tax credit may not be awarded under this**
 11 **chapter for the providing, after December 31, 2011, of a temporary**
 12 **residence.**

13 **(b) Any tax credit previously awarded but not claimed may not**
 14 **be carried over to a taxable year beginning during the period**
 15 **January 1, 2012, through December 31, 2013, and must be carried**
 16 **forward to a taxable year that begins after December 31, 2013, and**
 17 **before January 1, 2016.**

18 **(c) This chapter expires January 1, 2020.**

19 SECTION 16. IC 6-3.1-19-7 IS ADDED TO THE INDIANA CODE
 20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 21 1, 2011]: **Sec. 7. (a) A tax credit may not be awarded under this**
 22 **chapter for a qualified investment made after December 31, 2011.**

23 **(b) Any tax credit previously awarded but not claimed may not**
 24 **be carried over to a taxable year beginning during the period**
 25 **January 1, 2012, through December 31, 2013, and must be carried**
 26 **forward to a taxable year that begins after December 31, 2013, and**
 27 **before January 1, 2016.**

28 **(c) This chapter expires January 1, 2020.**

29 SECTION 17. IC 6-3.1-31-14 IS ADDED TO THE INDIANA
 30 CODE AS A NEW SECTION TO READ AS FOLLOWS
 31 [EFFECTIVE JULY 1, 2011]: **Sec. 14. (a) A tax credit may not be**
 32 **awarded under this chapter for making available after December**
 33 **31, 2011, a health benefit plan.**

34 **(b) Any tax credit previously awarded but not claimed may not**
 35 **be carried over to a taxable year beginning during the period**
 36 **January 1, 2012, through December 31, 2013, and must be carried**
 37 **forward to a taxable year that begins after December 31, 2013, and**
 38 **before January 1, 2016.**

39 **(c) This chapter expires January 1, 2020.**

40 SECTION 18. IC 6-3.1-31.2-11 IS ADDED TO THE INDIANA
 41 CODE AS A NEW SECTION TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2011]: **Sec. 11. (a) A tax credit may not be**

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1 awarded under this chapter for costs incurred after December 31,
2 2011.

3 (b) Any tax credit previously awarded but not claimed may not
4 be carried over to a taxable year beginning during the period
5 January 1, 2012, through December 31, 2013, and must be carried
6 forward to a taxable year that begins after December 31, 2013, and
7 before January 1, 2016.

8 (c) This chapter expires January 1, 2020.

9 SECTION 19. IC 6-5.5-1-2, AS AMENDED BY P.L.182-2009(ss),
10 SECTION 233, IS AMENDED TO READ AS FOLLOWS
11 [EFFECTIVE JANUARY 1, 2012]: Sec. 2. (a) Except as provided in
12 subsections (b) through (d), "adjusted gross income" means taxable
13 income as defined in Section 63 of the Internal Revenue Code, adjusted
14 as follows:

- 15 (1) Add the following amounts:
 - 16 (A) An amount equal to a deduction allowed or allowable
 - 17 under Section 166, Section 585, or Section 593 of the Internal
 - 18 Revenue Code.
 - 19 (B) An amount equal to a deduction allowed or allowable
 - 20 under Section 170 of the Internal Revenue Code.
 - 21 (C) An amount equal to a deduction or deductions allowed or
 - 22 allowable under Section 63 of the Internal Revenue Code for
 - 23 taxes based on or measured by income and levied at the state
 - 24 level by a state of the United States or levied at the local level
 - 25 by any subdivision of a state of the United States.
 - 26 (D) The amount of interest excluded under Section 103 of the
 - 27 Internal Revenue Code or under any other federal law, minus
 - 28 the associated expenses disallowed in the computation of
 - 29 taxable income under Section 265 of the Internal Revenue
 - 30 Code.
 - 31 (E) An amount equal to the deduction allowed under Section
 - 32 172 or 1212 of the Internal Revenue Code for net operating
 - 33 losses or net capital losses.
 - 34 (F) For a taxpayer that is not a large bank (as defined in
 - 35 Section 585(c)(2) of the Internal Revenue Code), an amount
 - 36 equal to the recovery of a debt, or part of a debt, that becomes
 - 37 worthless to the extent a deduction was allowed from gross
 - 38 income in a prior taxable year under Section 166(a) of the
 - 39 Internal Revenue Code.
 - 40 (G) Add the amount necessary to make the adjusted gross
 - 41 income of any taxpayer that owns property for which bonus
 - 42 depreciation was allowed in the current taxable year or in an

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earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(H) Add the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding twenty-five thousand dollars (\$25,000).

(I) Add an amount equal to the amount that a taxpayer claimed as a deduction for domestic production activities for the taxable year under Section 199 of the Internal Revenue Code for federal income tax purposes.

(J) Add an amount equal to any income not included in gross income as a result of the deferral of income arising from business indebtedness discharged in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument, as provided in Section 108(i) of the Internal Revenue Code. Subtract from the adjusted gross income of any taxpayer that added an amount to adjusted gross income in a previous year the amount necessary to offset the amount included in federal gross income as a result of the deferral of income arising from business indebtedness discharged in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument, as provided in Section 108(i) of the Internal Revenue Code.

(K) Add the amount necessary to make the adjusted gross income of any taxpayer that placed qualified restaurant property in service during the taxable year and that was classified as 15-year property under Section 168(e)(3)(E)(v) of the Internal Revenue Code equal to the amount of adjusted gross income that would have been computed had the classification not applied to the property in the year that it was placed in service.

(L) Add the amount necessary to make the adjusted gross

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income of any taxpayer that placed qualified retail improvement property in service during the taxable year and that was classified as 15-year property under Section 168(e)(3)(E)(ix) of the Internal Revenue Code equal to the amount of adjusted gross income that would have been computed had the classification not applied to the property in the year that it was placed in service.

(M) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that claimed the special allowance for qualified disaster assistance property under Section 168(n) of the Internal Revenue Code equal to the amount of adjusted gross income that would have been computed had the special allowance not been claimed for the property.

(N) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that made an election under Section 179C of the Internal Revenue Code to expense costs for qualified refinery property equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year.

(O) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that made an election under Section 181 of the Internal Revenue Code to expense costs for a qualified film or television production equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year.

(P) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that treated a loss from the sale or exchange of preferred stock in:

- (i) the Federal National Mortgage Association, established under the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.); or
- (ii) the Federal Home Loan Mortgage Corporation, established under the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.);

as an ordinary loss under Section 301 of the Emergency Economic Stabilization Act of 2008 in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had the loss not been treated as an ordinary loss.

(Q) Add an amount equal to any exempt insurance income

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- 1 under Section 953(e) of the Internal Revenue Code for active
 2 financing income under Subpart F, Subtitle A, Chapter 1,
 3 Subchapter N of the Internal Revenue Code.
- 4 (2) Subtract the following amounts:
- 5 (A) Income that the United States Constitution or any statute
 6 of the United States prohibits from being used to measure the
 7 tax imposed by this chapter.
- 8 (B) Income that is derived from sources outside the United
 9 States, as defined by the Internal Revenue Code.
- 10 (C) An amount equal to a debt or part of a debt that becomes
 11 worthless, as permitted under Section 166(a) of the Internal
 12 Revenue Code.
- 13 (D) An amount equal to any bad debt reserves that are
 14 included in federal income because of accounting method
 15 changes required by Section 585(c)(3)(A) or Section 593 of
 16 the Internal Revenue Code.
- 17 (E) The amount necessary to make the adjusted gross income
 18 of any taxpayer that owns property for which bonus
 19 depreciation was allowed in the current taxable year or in an
 20 earlier taxable year equal to the amount of adjusted gross
 21 income that would have been computed had an election not
 22 been made under Section 168(k) of the Internal Revenue Code
 23 to apply bonus depreciation.
- 24 (F) The amount necessary to make the adjusted gross income
 25 of any taxpayer that placed Section 179 property (as defined
 26 in Section 179 of the Internal Revenue Code) in service in the
 27 current taxable year or in an earlier taxable year equal to the
 28 amount of adjusted gross income that would have been
 29 computed had an election for federal income tax purposes not
 30 been made for the year in which the property was placed in
 31 service to take deductions under Section 179 of the Internal
 32 Revenue Code in a total amount exceeding twenty-five
 33 thousand dollars (\$25,000).
- 34 (G) Income that is:
- 35 (i) exempt from taxation under IC 6-3-2-21.7; and
 36 (ii) included in the taxpayer's taxable income under the
 37 Internal Revenue Code.
- 38 (b) In the case of a credit union, "adjusted gross income" for a
 39 taxable year means the total transfers to undivided earnings **plus the**
 40 **amount excluded from federal gross income under Section 103 of**
 41 **the Internal Revenue Code for interest received on an obligation of**
 42 **a state other than Indiana or a political subdivision of such a state**

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1 minus dividends for that taxable year after statutory reserves are set
2 aside under IC 28-7-1-24.

3 (c) In the case of an investment company, "adjusted gross income"
4 means the company's federal taxable income **plus the amount**
5 **excluded from federal gross income under Section 103 of the**
6 **Internal Revenue Code for interest received on an obligation of a**
7 **state other than Indiana or a political subdivision of such a state**
8 multiplied by the quotient of:

9 (1) the aggregate of the gross payments collected by the company
10 during the taxable year from old and new business upon
11 investment contracts issued by the company and held by residents
12 of Indiana; divided by

13 (2) the total amount of gross payments collected during the
14 taxable year by the company from the business upon investment
15 contracts issued by the company and held by persons residing
16 within Indiana and elsewhere.

17 (d) As used in subsection (c), "investment company" means a
18 person, copartnership, association, limited liability company, or
19 corporation, whether domestic or foreign, that:

20 (1) is registered under the Investment Company Act of 1940 (15
21 U.S.C. 80a-1 et seq.); and

22 (2) solicits or receives a payment to be made to itself and issues
23 in exchange for the payment:

- 24 (A) a so-called bond;
- 25 (B) a share;
- 26 (C) a coupon;
- 27 (D) a certificate of membership;
- 28 (E) an agreement;
- 29 (F) a pretended agreement; or
- 30 (G) other evidences of obligation;

31 entitling the holder to anything of value at some future date, if the
32 gross payments received by the company during the taxable year
33 on outstanding investment contracts, plus interest and dividends
34 earned on those contracts (by prorating the interest and dividends
35 earned on investment contracts by the same proportion that
36 certificate reserves (as defined by the Investment Company Act
37 of 1940) is to the company's total assets) is at least fifty percent
38 (50%) of the company's gross payments upon investment
39 contracts plus gross income from all other sources except
40 dividends from subsidiaries for the taxable year. The term
41 "investment contract" means an instrument listed in clauses (A)
42 through (G).

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1 SECTION 20. IC 6-8-5-1, AS AMENDED BY P.L.2-2007,
 2 SECTION 128, IS AMENDED TO READ AS FOLLOWS
 3 [EFFECTIVE JANUARY 1, 2012]: Sec. 1. (a) All bonds issued after
 4 March 11, 1959, or notes, warrants, or other evidences of indebtedness
 5 issued in the state of Indiana by or in the name of any **Indiana** county,
 6 township, city, incorporated town, school corporation, state educational
 7 institution, or any other **Indiana** political, municipal, public or
 8 quasi-public corporation or body, or in the name of any special
 9 assessment or taxing district or in the name of any authorized body of
 10 any such corporation or district, the interest thereon, the proceeds
 11 received by a holder from the sale of such obligations to the extent of
 12 the holder's cost of acquisition, or proceeds received upon redemption
 13 prior to maturity, or proceeds received at maturity, and the receipt of
 14 such interest and proceeds, shall be exempt from taxation in the state
 15 of Indiana for all purposes except a state inheritance tax imposed under
 16 IC 6-4.1.

17 (b) All bonds issued after March 11, 1933, and before March 12,
 18 1959, by any municipality in this state under the provisions of any
 19 statute whereby the terms thereof provide for the payment of such
 20 bonds out of the funds derived from the revenues of any municipally
 21 owned utility or which are to be paid by pledging the physical property
 22 of any such municipally owned utility, or any bonds issued pledging
 23 both the physical property and the revenues of such utility, or any
 24 bonds issued for additions to or improvements to be made to such
 25 municipally owned utility, or any bonds issued by any municipality to
 26 be paid out of taxes levied by such municipality for the acquiring,
 27 purchase, construction, or the reconstruction of a utility, or any part
 28 thereof, shall be exempt from taxation for all purposes except a state
 29 inheritance tax imposed under IC 6-4.1.

30 (c) This section does not apply to measuring the franchise tax
 31 imposed on the privilege of transacting the business of a financial
 32 institution in Indiana under IC 6-5.5.

33 (d) No other statute exempting interest paid on debt obligations of:
 34 (1) a state or local public entity, including an agency, a
 35 government corporation, or an authority; or
 36 (2) a corporation or other entity leasing real or personal property
 37 to an entity described in subdivision (1);

38 applies to measuring of the franchise tax imposed on financial
 39 institutions under IC 6-5.5.

40 SECTION 21. IC 6-8.1-3-10 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) The department
 42 may enter into contracts with persons outside the department to provide

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1 services that the department feels are necessary to properly administer
2 and collect the listed taxes.

3 (b) A contract entered into under this section must require the
4 person providing the service to comply with the requirements
5 governing the administration and collection of taxes by the department.

6 **(c) The department shall enter into a contract with persons**
7 **outside the department to recommend to the department the**
8 **proper distribution, apportionment, or allocation of income and**
9 **deductions between and among two (2) or more organizations,**
10 **trades, or businesses owned or controlled directly or indirectly by**
11 **the same interests in the manner provided in IC 6-3-2-2(m).**

12 SECTION 22. IC 6-8.1-5-1, AS AMENDED BY P.L.1-2007,
13 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JANUARY 1, 2011 (RETROACTIVE)]: Sec. 1. (a) As used in this
15 section, "letter of findings" includes a supplemental letter of findings.

16 (b) If the department reasonably believes that a person has not
17 reported the proper amount of tax due, the department shall make a
18 proposed assessment of the amount of the unpaid tax on the basis of the
19 best information available to the department. The amount of the
20 assessment is considered a tax payment not made by the due date and
21 is subject to IC 6-8.1-10 concerning the imposition of penalties and
22 interest. The department shall send the person a notice of the proposed
23 assessment through the United States mail.

24 (c) If the person has a surety bond guaranteeing payment of the tax
25 for which the proposed assessment is made, the department shall
26 furnish a copy of the proposed assessment to the surety. The notice of
27 proposed assessment is prima facie evidence that the department's
28 claim for the unpaid tax is valid. The burden of proving that the
29 proposed assessment is wrong rests with the person against whom the
30 proposed assessment is made.

31 (d) The notice shall state that the person has forty-five (45) days
32 from the date the notice is mailed, **if the notice was mailed before**
33 **January 1, 2011, and sixty (60) days from the date the notice is**
34 **mailed, if the notice was mailed after December 31, 2010,** to pay the
35 assessment or to file a written protest. If the person files a protest and
36 requires a hearing on the protest, the department shall:

37 (1) set the hearing at the department's earliest convenient time;
38 and

39 (2) notify the person by United States mail of the time, date, and
40 location of the hearing.

41 (e) The department may hold the hearing at the location of its choice
42 within Indiana if that location complies with IC 6-8.1-3-8.5.

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1 (f) No later than sixty (60) days after conducting a hearing on a
 2 protest, or after making a decision on a protest when no hearing is
 3 requested, the department shall issue a letter of findings and shall send
 4 a copy of the letter through the United States mail to the person who
 5 filed the protest and to the person's surety, if the surety was notified of
 6 the proposed assessment under subsection (b). The department may
 7 continue the hearing until a later date if the taxpayer presents
 8 additional information at the hearing or the taxpayer requests an
 9 opportunity to present additional information after the hearing.

10 (g) A person that disagrees with a decision in a letter of findings
 11 may request a rehearing not more than thirty (30) days after the date on
 12 which the letter of findings is issued by the department. The
 13 department shall consider the request and may grant the rehearing if the
 14 department reasonably believes that a rehearing would be in the best
 15 interests of the taxpayer and the state.

16 (h) If a person disagrees with a decision in a letter of findings, the
 17 person may appeal the decision to the tax court. However, the tax court
 18 does not have jurisdiction to hear an appeal that is filed more than sixty
 19 (60) days after the date on which:

20 (1) the letter of findings is issued by the department, if the person
 21 does not make a timely request for a rehearing under subsection
 22 (g) on the letter of findings; or

23 (2) the department issues a denial of the person's timely request
 24 for a rehearing under subsection (g) on the letter of findings.

25 (i) The tax court shall hear an appeal under subsection (h) de novo
 26 and without a jury. The tax court may do the following:

27 (1) Uphold or deny any part of the assessment that is appealed.

28 (2) Assess the court costs in a manner that the court believes to be
 29 equitable.

30 ~~(3) Enjoin the collection of a listed tax under IC 33-26-6-2.~~

31 **(3) Take any other action permitted by law.**

32 (j) The department shall demand payment, as provided in
 33 IC 6-8.1-8-2(a), of any part of the proposed tax assessment, interest,
 34 and penalties that it finds owing because:

35 (1) the person failed to properly respond within the forty-five (45)
 36 day period;

37 (2) the person requested a hearing but failed to appear at that
 38 hearing; or

39 (3) after consideration of the evidence presented in the protest or
 40 hearing, the department finds that the person still owes tax.

41 (k) The department shall make the demand for payment in the
 42 manner provided in IC 6-8.1-8-2.

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1 (l) Subsection (b) does not apply to a motor carrier fuel tax return.
 2 SECTION 23. IC 6-8.1-8-2, AS AMENDED BY P.L.111-2006,
 3 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 4 UPON PASSAGE]: Sec. 2. (a) Except as provided in IC 6-8.1-5-3 **and**
 5 **section 16 of this chapter**, the department must issue a demand notice
 6 for the payment of a tax and any interest or penalties accrued on the
 7 tax, if a person files a tax return without including full payment of the
 8 tax or if the department, after ruling on a protest, finds that a person
 9 owes the tax before the department issues a tax warrant. The demand
 10 notice must state the following:

- 11 (1) That the person has ten (10) days from the date the department
- 12 mails the notice to either pay the amount demanded or show
- 13 reasonable cause for not paying the amount demanded.
- 14 (2) The statutory authority of the department for the issuance of
- 15 a tax warrant.
- 16 (3) The earliest date on which a tax warrant may be filed and
- 17 recorded.
- 18 (4) The statutory authority for the department to levy against a
- 19 person's property that is held by a financial institution.
- 20 (5) The remedies available to the taxpayer to prevent the filing
- 21 and recording of the judgment.

22 If the department files a tax warrant in more than one (1) county, the
 23 department is not required to issue more than one (1) demand notice.

24 (b) If the person does not pay the amount demanded or show
 25 reasonable cause for not paying the amount demanded within the ten
 26 (10) day period, the department may issue a tax warrant for the amount
 27 of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs,
 28 and fees established under section 4(b) of this chapter when applicable.
 29 When the department issues a tax warrant, a collection fee of ten
 30 percent (10%) of the unpaid tax is added to the total amount due.

31 (c) When the department issues a tax warrant, it may not file the
 32 warrant with the circuit court clerk of any county in which the person
 33 owns property until at least twenty (20) days after the date the demand
 34 notice was mailed to the taxpayer. The department may also send the
 35 warrant to the sheriff of any county in which the person owns property
 36 and direct the sheriff to file the warrant with the circuit court clerk:

- 37 (1) at least twenty (20) days after the date the demand notice was
- 38 mailed to the taxpayer; and
- 39 (2) no later than five (5) days after the date the department issues
- 40 the warrant.

41 (d) When the circuit court clerk receives a tax warrant from the
 42 department or the sheriff, the clerk shall record the warrant by making

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1 an entry in the judgment debtor's column of the judgment record,
2 listing the following:

3 (1) The name of the person owing the tax.

4 (2) The amount of the tax, interest, penalties, collection fee,
5 sheriff's costs, clerk's costs, and fees established under section
6 4(b) of this chapter when applicable.

7 (3) The date the warrant was filed with the clerk.

8 (e) When the entry is made, the total amount of the tax warrant
9 becomes a judgment against the person owing the tax. The judgment
10 creates a lien in favor of the state that attaches to all the person's
11 interest in any:

12 (1) chose in action in the county; and

13 (2) real or personal property in the county;
14 excepting only negotiable instruments not yet due.

15 (f) A judgment obtained under this section is valid for ten (10) years
16 from the date the judgment is filed. The department may renew the
17 judgment for additional ten (10) year periods by filing an alias tax
18 warrant with the circuit court clerk of the county in which the judgment
19 previously existed.

20 (g) A judgment arising from a tax warrant in a county may be
21 released by the department:

22 (1) after the judgment, including all accrued interest to the date of
23 payment, has been fully satisfied; or

24 (2) if the department determines that the tax assessment or the
25 issuance of the tax warrant was in error.

26 (h) If the department determines that the filing of a tax warrant was
27 in error, the department shall mail a release of the judgment to the
28 taxpayer and the circuit court clerk of each county where the warrant
29 was filed. The department shall mail the release as soon as possible but
30 no later than seven (7) days after:

31 (1) the determination by the department that the filing of the
32 warrant was in error; and

33 (2) the receipt of information by the department that the judgment
34 has been recorded under subsection (d).

35 (i) If the department determines that a judgment described in
36 subsection (h) is obstructing a lawful transaction, the department shall
37 mail a release of the judgment to the taxpayer and the circuit court
38 clerk of each county where the judgment was filed immediately upon
39 making the determination.

40 (j) A release issued under subsection (h) or (i) must state that the
41 filing of the tax warrant was in error. Upon the request of the taxpayer,
42 the department shall mail a copy of a release issued under subsection

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1 (h) or (i) to each major credit reporting company located in each county
2 where the judgment was filed.

3 (k) The commissioner shall notify each state agency or officer
4 supplied with a tax warrant list of the issuance of a release under
5 subsection (h) or (i).

6 (l) If the sheriff collects the full amount of a tax warrant, the sheriff
7 shall disburse the money collected in the manner provided in section
8 3(c) of this chapter. If a judgment has been partially or fully satisfied
9 by a person's surety, the surety becomes subrogated to the department's
10 rights under the judgment. If a sheriff releases a judgment:

- 11 (1) before the judgment is fully satisfied;
- 12 (2) before the sheriff has properly disbursed the amount collected;
- 13 or

14 (3) after the sheriff has returned the tax warrant to the department;
15 the sheriff commits a Class B misdemeanor and is personally liable for
16 the part of the judgment not remitted to the department.

17 SECTION 24. IC 6-8.1-8-16 IS ADDED TO THE INDIANA CODE
18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
19 UPON PASSAGE]: **Sec. 16. (a) This section applies without an
20 injunction from the tax court to any assessment that is made or
21 pending after April 30, 2011.**

22 **(b) Except as provided in IC 6-8.1-5-3, no demand notice,
23 warrant, levy, or proceeding in court for the collection of a listed
24 tax or any penalties and interest on a listed tax may be issued,
25 commenced, or conducted against a taxpayer and no lien on the
26 taxpayer's property may be imposed until after the later of the
27 following:**

- 28 **(1) The expiration of the period in which the taxpayer may
29 appeal the listed tax to the tax court.**
- 30 **(2) A decision of the tax court concerning the listed tax
31 becomes final, if the taxpayer filed a timely appeal.**

32 SECTION 25. IC 6-8.1-9-1, AS AMENDED BY P.L.182-2009(ss),
33 SECTION 256, IS AMENDED TO READ AS FOLLOWS
34 [EFFECTIVE UPON PASSAGE]: **Sec. 1. (a) If a person has paid more
35 tax than the person determines is legally due for a particular taxable
36 period, the person may file a claim for a refund with the department.
37 Except as provided in subsections (f), ~~and~~ (g), **and (h)**, in order to
38 obtain the refund, the person must file the claim with the department
39 within three (3) years after the latter of the following:**

- 40 (1) The due date of the return.
- 41 (2) The date of payment.

42 For purposes of this section, the due date for a return filed for the state

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1 gross retail or use tax, the gasoline tax, the special fuel tax, the motor
 2 carrier fuel tax, the oil inspection fee, or the petroleum severance tax
 3 is the end of the calendar year which contains the taxable period for
 4 which the return is filed. The claim must set forth the amount of the
 5 refund to which the person is entitled and the reasons that the person
 6 is entitled to the refund.

7 (b) When the department receives a claim for refund, the
 8 department shall consider the claim for refund and shall, if the taxpayer
 9 requests, hold a hearing on the claim for refund to obtain and consider
 10 additional evidence. After considering the claim and all evidence
 11 relevant to the claim, the department shall issue a decision on the
 12 claim, stating the part, if any, of the refund allowed and containing a
 13 statement of the reasons for any part of the refund that is denied. The
 14 department shall mail a copy of the decision to the person who filed the
 15 claim. If the department allows the full amount of the refund claim, a
 16 warrant for the payment of the claim is sufficient notice of the decision.

17 (c) If the person disagrees with any part of the department's
 18 decision, the person may appeal the decision, regardless of whether or
 19 not the person protested the tax payment or whether or not the person
 20 has accepted a refund. The person must file the appeal with the tax
 21 court. The tax court does not have jurisdiction to hear a refund appeal
 22 suit, if:

- 23 (1) the appeal is filed more than three (3) years after the date the
 24 claim for refund was filed with the department;
 25 (2) the appeal is filed more than ninety (90) days after the date the
 26 department mails the decision of denial to the person; or
 27 (3) the appeal is filed both before the decision is issued and
 28 before the one hundred eighty-first day after the date the person
 29 files the claim for refund with the department.

30 (d) The tax court shall hear the appeal de novo and without a jury,
 31 and after the hearing may order or deny any part of the appealed
 32 refund. The court may assess the court costs in any manner that it feels
 33 is equitable. ~~The court may enjoin the collection of any of the listed~~
 34 ~~taxes under IC 33-26-6-2.~~ The court may also allow a refund of taxes,
 35 interest, and penalties that have been paid to and collected by the
 36 department.

37 (e) With respect to the motor vehicle excise tax, this section applies
 38 only to penalties and interest paid on assessments of the motor vehicle
 39 excise tax. Any other overpayment of the motor vehicle excise tax is
 40 subject to IC 6-6-5.

41 (f) If a taxpayer's federal income tax liability for a taxable year is
 42 modified by the Internal Revenue Service, and the modification would

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1 result in a reduction of the tax legally due, the due date by which the
2 taxpayer must file a claim for refund with the department is the later of:

- 3 (1) the date determined under subsection (a); or
4 (2) the date that is ~~six (6) months~~ **one hundred eighty (180) days**
5 after the date on which the taxpayer is notified of the modification
6 by the Internal Revenue Service.

7 (g) If an agreement to extend the assessment time period is entered
8 into under IC 6-8.1-5-2(h), the period during which a person may file
9 a claim for a refund under subsection (a) is extended to the same date
10 to which the assessment time period is extended.

11 **(h) If a taxpayer's claim for a refund of gross retail or use tax is
12 based on:**

- 13 **(1) IC 6-2.5-4-5(c)(3); or**
14 **(2) the exemption provided by IC 6-2.5-5-5.1 for electrical**
15 **energy, natural or artificial gas, water, steam, and steam heat;**
16 **the person must file the claim with the department within one (1)**
17 **year after the date of payment.**

18 SECTION 26. IC 6-8.1-9-2, AS AMENDED BY P.L.182-2009(ss),
19 SECTION 257, IS AMENDED TO READ AS FOLLOWS
20 [EFFECTIVE JANUARY 1, 2011 (RETROACTIVE)]: Sec. 2. (a) If the
21 department finds that a person has paid more tax for a taxable year than
22 is legally due, the department shall apply the amount of the excess
23 against any amount of that same tax that is assessed and is currently
24 due. The department may then apply any remaining excess against any
25 of the listed taxes that have been assessed against the person and that
26 are currently due. Subject to subsection (c), if any excess remains after
27 the department has applied the overpayment against the person's tax
28 liabilities, the department shall either refund the amount to the person
29 or, at the person's request, credit the amount to the person's future tax
30 liabilities.

31 (b) Subject to subsection (c), if a court determines that a person has
32 paid more tax for a taxable year than is legally due, the department
33 shall refund the excess amount to the person.

34 (c) As used in this subsection, "pass through entity" means a
35 corporation that is exempt from the adjusted gross income tax under
36 IC 6-3-2-2.8(2), a partnership, a limited liability company, or a limited
37 liability partnership and "pass through income" means a person's
38 distributive share of adjusted gross income for a taxable year
39 attributable to the person's interest in a pass through entity. This
40 subsection applies to a person's overpayment of adjusted gross income
41 tax for a taxable year if:

- 42 (1) the person has filed a timely claim for refund with respect to

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- 1 the overpayment under IC 6-8.1-9-1;
- 2 (2) the overpayment:
 - 3 (A) is with respect to a taxable year beginning before January
 - 4 1, 2009;
 - 5 (B) is attributable to amounts paid to the department by:
 - 6 (i) a nonresident shareholder, partner, or member of a pass
 - 7 through entity;
 - 8 (ii) a pass through entity under IC 6-3-4-12 or IC 6-3-4-13
 - 9 on behalf of a nonresident shareholder, partner, or member
 - 10 of the pass through entity; or
 - 11 (iii) a pass through entity under IC 6-3-4-12 or IC 6-3-4-13
 - 12 on behalf of a nonresident shareholder, partner, or member
 - 13 of another pass through entity; and
 - 14 (3) the overpayment arises from a determination by the
 - 15 department or a court that the person's pass through income is not
 - 16 includible in the person's adjusted gross income derived from
 - 17 sources within Indiana as a result of the application of
 - 18 IC 6-3-2-2(a)(5). ~~and IC 6-3-2-2(g).~~

19 The department shall apply the overpayment to the person's liability for
 20 taxes that have been assessed and are currently due as provided in
 21 subsection (a) and apply any remaining overpayment as a credit or
 22 credits in satisfaction of the person's liability for listed taxes in taxable
 23 years beginning after December 31, 2008. If the person, including any
 24 successor to the person's interest in the overpayment, does not have
 25 sufficient liability for listed taxes against which to credit all the
 26 remaining overpayment in a taxable year beginning after December 31,
 27 2008, and ending before January 1, 2019, the taxpayer is not entitled
 28 for any taxable year ending after December 31, 2018, to have any part
 29 of the remaining overpayment applied, refunded, or credited to the
 30 person's liability for listed taxes. If an overpayment or part of an
 31 overpayment is required to be applied as a credit under this subsection
 32 to the person's liability for listed taxes for a taxable year beginning after
 33 December 31, 2008, and has not been determined by the department or
 34 a court to meet the conditions of subdivision (3) by the due date of the
 35 person's return for a listed tax for a taxable year beginning after
 36 December 31, 2008, the department shall refund to the person that part
 37 of the overpayment that should have been applied as a credit for such
 38 taxable year within ninety (90) days of the date that the department or
 39 a court makes the determination that the overpayment meets the
 40 conditions of subdivision (3). However, the department may establish
 41 a program to refund small overpayment amounts that do not exceed the
 42 threshold dollar value established by the department rather than

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1 crediting the amounts against tax liability accruing for a taxable year
 2 after December 31, 2008. A person that receives a refund or credit
 3 under this subsection shall file a report with the department in the form
 4 and in the schedule specified by the department that identifies under
 5 penalties of perjury the home state or other jurisdiction where the
 6 income subject to the refund or credit was reported as income
 7 attributable to that state or jurisdiction.

8 (d) An excess tax payment that is not refunded or credited against
 9 a current or future tax liability within ninety (90) days after the date the
 10 refund claim is filed, the date the tax payment was due, or the date the
 11 tax was paid, whichever is latest, accrues interest from the date the
 12 refund claim is filed at the rate established under IC 6-8.1-10-1 until a
 13 date, determined by the department, that does not precede by more than
 14 thirty (30) days, the date on which the refund or credit is made. As used
 15 in this subsection, "refund claim" includes an amended return that
 16 indicates an overpayment of tax.

17 SECTION 27. IC 20-19-2-14, AS ADDED BY P.L.1-2005,
 18 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2011]: Sec. 14. The state board shall do the following:

- 20 (1) Establish the educational goals of the state, developing
 21 standards and objectives for local school corporations.
 22 (2) Assess the attainment of the established goals.
 23 (3) Assure compliance with established standards and objectives.
 24 **(4) Coordinate with the commission for higher education**
 25 **(IC 21-18-1) and the department of workforce development**
 26 **(IC 22-4.1-2) to develop entrepreneurship education programs**
 27 **for elementary and secondary education, higher education,**
 28 **and individuals in the work force.**
 29 ~~(4)~~ **(5) Make recommendations to the governor and general**
 30 **assembly concerning the educational needs of the state, including**
 31 **financial needs.**

32 SECTION 28. IC 21-18-8-5 IS ADDED TO THE INDIANA CODE
 33 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 34 1, 2011]: **Sec. 5. (a) The commission shall coordinate with the**
 35 **Indiana state board of education (IC 20-19-2) and the department**
 36 **of workforce development (IC 22-4.1-2) to develop**
 37 **entrepreneurship education programs for elementary and**
 38 **secondary education, higher education, and individuals in the work**
 39 **force.**

40 **(b) The commission shall require each state educational**
 41 **institution to expand technology and innovation commercialization**
 42 **programs.**

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1 SECTION 29. IC 22-4.1-4-5 IS ADDED TO THE INDIANA CODE
 2 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
 3 1, 2011]: **Sec. 5. The department shall coordinate with the**
 4 **commission for higher education (IC 21-18-1) and the Indiana state**
 5 **board of education (IC 20-19-2) to develop entrepreneurship**
 6 **education programs for elementary and secondary education,**
 7 **higher education, and individuals in the work force.**

8 SECTION 30. IC 33-26-6-2, AS AMENDED BY P.L.91-2006,
 9 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 UPON PASSAGE]: Sec. 2. (a) A taxpayer who wishes to initiate an
 11 original tax appeal must file a petition in the tax court to set aside the
 12 final determination of the department of state revenue or the Indiana
 13 board of tax review. If a taxpayer fails to comply with any statutory
 14 requirement for the initiation of an original tax appeal, the tax court
 15 does not have jurisdiction to hear the appeal.

16 (b) **If a taxpayer who** wishes to enjoin the collection of a tax
 17 pending the original tax appeal **and the collection action is not**
 18 **prohibited under IC 6-8.1-8-16, the taxpayer** must file a petition
 19 with the tax court to enjoin the collection of the tax. The petition must
 20 set forth a summary of:

21 (1) the issues that the petitioner will raise in the original tax
 22 appeal; and

23 (2) the equitable considerations for which the tax court should
 24 order the collection of the tax to be enjoined.

25 (c) After a hearing on the petition filed under subsection (b), the tax
 26 court may enjoin the collection of the tax pending the original tax
 27 appeal, if the tax court finds that:

28 (1) the issues raised by the original tax appeal are substantial;

29 (2) the petitioner has a reasonable opportunity to prevail in the
 30 original tax appeal; and

31 (3) the equitable considerations favoring the enjoining of the
 32 collection of the tax outweigh the state's interests in collecting the
 33 tax pending the original tax appeal.

34 (d) This section does not apply to a final determination of the
 35 Indiana gaming commission under IC 4-32.2.

36 (e) This section applies to a final determination made by the
 37 department of state revenue concerning the gaming card excise tax
 38 established under IC 4-32.2-10.

39 SECTION 31. IC 33-26-6-2.5 IS ADDED TO THE INDIANA
 40 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
 41 [EFFECTIVE UPON PASSAGE]: **Sec. 2.5. (a) A taxpayer may**
 42 **petition the tax court to enjoin a violation of IC 6-8.1-8-16.**

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1 (b) After a hearing on a petition filed under subsection (a), the
2 tax court may:

- 3 (1) enjoin a collection action that violates IC 6-8.1-8-16;
- 4 (2) order the release of any lien imposed in violation of
- 5 IC 6-8.1-8-16; and
- 6 (3) order a refund of any amount that was collected in
- 7 violation of IC 6-8.1-8-16.

8 SECTION 32. IC 36-7-14-25.5 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 25.5. (a)
10 Notwithstanding any other law, the legislative body may pledge
11 revenues received or to be received by the unit from:

- 12 (1) the unit's:
 - 13 (A) certified shares of the county adjusted gross income tax
 - 14 under IC 6-3.5-1.1;
 - 15 (B) distributive share of the county option income tax under
 - 16 IC 6-3.5-6; or
 - 17 (C) distributions of county economic development income
 - 18 tax revenue under IC 6-3.5-7;
- 19 (2) any other source legally available to the unit for the purposes
- 20 of this chapter; or
- 21 (3) any combination of revenues under subdivisions (1) through
- 22 (2);
- 23 in any amount to pay amounts payable under section 25.1 or 25.2 of
- 24 this chapter.

25 (b) The legislative body may covenant to adopt an ordinance to
26 increase its tax rate under the county option income tax or any other
27 revenues at the time it is necessary to raise funds to pay any amounts
28 payable under section 25.1 or 25.2 of this chapter.

29 (c) The commission may pledge revenues received or to be received
30 from any source legally available to the commission for the purposes
31 of this chapter in any amount to pay amounts payable under section
32 25.1 or 25.2 of this chapter.

33 (d) The pledge or the covenant under this section may be for the life
34 of the bonds issued under section 25.1 of this chapter, the term of a
35 lease entered into under section 25.2 of this chapter, or for a shorter
36 period as determined by the legislative body. Money pledged by the
37 legislative body under this section shall be considered revenues or
38 other money available to the commission under sections 25.1 through
39 25.2 of this chapter.

40 (e) The general assembly covenants not to impair this pledge or
41 covenant so long as any bonds issued under section 25.1 of this chapter
42 are outstanding or as long as any lease entered into under section 25.2

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1 of this chapter is still in effect. The pledge or covenant shall be
2 enforced as provided in IC 5-1-14-4.

3 SECTION 33. IC 36-7-15.1-17.5 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 17.5. (a)
5 Notwithstanding any other law, the legislative body may pledge
6 revenues received or to be received by the unit from:

7 (1) the unit's:

8 (A) **certified shares of the county adjusted gross income tax**
9 **under IC 6-3.5-1.1;**

10 (B) distributive share of the county option income tax under
11 IC 6-3.5-6; or

12 (C) **distributions of county economic development income**
13 **tax revenue under IC 6-3.5-7;**

14 (2) any other source legally available to the unit for the purposes
15 of this chapter; or

16 (3) combination of revenues under subdivisions (1) through (2);
17 in any amount to pay amounts payable under section 17 or 17.1 of this
18 chapter.

19 (b) The legislative body may covenant to adopt an ordinance to
20 increase its tax rate under the county option income tax or any other
21 revenues at the time it is necessary to raise funds to pay any amounts
22 payable under section 17 or 17.1 of this chapter.

23 (c) The commission may pledge revenues received or to be received
24 from any source legally available to it for the purposes of this chapter
25 in any amount to pay amounts payable under section 17 or 17.1 of this
26 chapter.

27 (d) The pledge or the covenant under this section may be for the life
28 of the bonds issued under section 17 of this chapter, the term of a lease
29 entered into under section 17.1 of this chapter, or for a shorter period
30 as determined by the legislative body. Money pledged by the legislative
31 body under this section shall be considered revenues or other money
32 available to the commission under sections 17 through 17.1 of this
33 chapter.

34 (e) The general assembly covenants not to impair this pledge or
35 covenant so long as any bonds issued under section 17 of this chapter
36 are outstanding or as long as any lease entered into under section 17.1
37 of this chapter is still in effect. The pledge or covenant shall be
38 enforced as provided in IC 5-1-14-4.

39 SECTION 34. IC 36-7.6-4-2, AS ADDED BY P.L.232-2007,
40 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
41 JULY 1, 2011]: Sec. 2. (a) Beginning January 1 of the year following
42 the year in which a development authority is established, the fiscal

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1 officer of each county and each municipality that is a member of the
2 development authority shall transfer the amount determined under
3 subsection (b) to the development authority for deposit in the
4 development authority fund.

5 (b) The amount of the transfer required each year by subsection (a)
6 from each county and each municipality is equal to **the following:**

7 (1) **Except as provided in subdivision (2),** the amount that
8 would be distributed to the county or the municipality as certified
9 distributions of county economic development income tax
10 revenue raised from a county economic development income tax
11 rate of five-hundredths of one percent (0.05%) in the county.

12 (2) **In the case of a county or municipality that becomes a**
13 **member of a development authority after June 30, 2011, and**
14 **before July 1, 2013, the amount that would be distributed to**
15 **the county or municipality as certified distributions of county**
16 **economic development income tax revenue raised from a**
17 **county economic development income tax rate of twenty-five**
18 **thousandths of one percent (0.025%) in the county.**

19 (c) Notwithstanding subsection (b), if the additional county
20 economic development income tax under IC 6-3.5-7-28 is in effect in
21 a county, the obligations of the county and each municipality in the
22 county under this section are satisfied by the transfer to the
23 development fund of all county economic development income tax
24 revenue derived from the additional tax and deposited in the county
25 regional development authority fund.

26 (d) The following apply to the transfers required by this section:

27 (1) The transfers shall be made without appropriation by the fiscal
28 body of the county or the fiscal body of the municipality.

29 (2) Except as provided in subdivision (3), the fiscal officer of
30 each county and each municipality that is a member of the
31 development authority shall transfer twenty-five percent (25%) of
32 the total transfers due for the year before the last business day of
33 January, April, July, and October of each year.

34 (3) County economic development income tax revenue derived
35 from the additional county economic development income tax
36 under IC 6-3.5-7-28 must be transferred to the development fund
37 not more than thirty (30) days after being deposited in the county
38 regional development fund.

39 (4) This subdivision does not apply to a county in which the
40 additional county economic development income tax under
41 IC 6-3.5-7-28 has been imposed or to any municipality in the
42 county. The transfers required by this section may be made from

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1 any local revenue (other than property tax revenue) of the county
 2 or municipality, including excise tax revenue, income tax
 3 revenue, local option tax revenue, riverboat tax revenue,
 4 distributions, incentive payments, or money deposited in the
 5 county's or municipality's local major moves construction fund
 6 under IC 8-14-16.

7 SECTION 35. IC 6-3-2-2.2 IS REPEALED [EFFECTIVE
 8 JANUARY 1, 2011 (RETROACTIVE)].

9 SECTION 36. [EFFECTIVE JULY 1, 2011] IC 6-3-1-3.5,
 10 IC 6-3-2-1, IC 6-3-2-22, IC 6-5.5-1-2, and IC 6-8-5-1, all as
 11 amended or added by this act, apply to taxable years beginning
 12 after December 31, 2011.

13 (b) This SECTION expires January 1, 2016.

14 SECTION 37. [EFFECTIVE JANUARY 1, 2011
 15 (RETROACTIVE)] (a) IC 6-3-2-2, as amended by this act, applies
 16 to taxable years beginning after December 31, 2010.

17 (b) This SECTION expires January 1, 2014.

18 SECTION 38. [EFFECTIVE JULY 1, 2012] (a) This SECTION
 19 applies to a corporate taxpayer that:

20 (1) pays adjusted gross income tax under IC 6-3-1 through
 21 IC 6-3-7; and

22 (2) has a taxable year that begins before July 1, 2012, and
 23 ends after June 30, 2012.

24 (b) Subject to subsection (c), the rate of the adjusted gross
 25 income tax imposed under IC 6-3-2-1 for that taxable year is a rate
 26 equal to the sum of:

27 (1) eight and five-tenths percent (8.5%) multiplied by a
 28 fraction, the numerator of which is the number of days in the
 29 taxpayer's taxable year that occurred before July 1, 2012, and
 30 the denominator of which is the total number of days in the
 31 taxable year; and

32 (2) six and five-tenths percent (6.5%) multiplied by a fraction,
 33 the numerator of which is the number of days in the
 34 taxpayer's taxable year that occurred after June 30, 2012, and
 35 the denominator of which is the total number of days in the
 36 taxable year.

37 (c) However, the rate determined under this section shall be
 38 rounded to the nearest one-hundredth of one percent (0.01%).

39 (d) This SECTION expires January 1, 2015.

40 SECTION 39. An emergency is declared for this act.

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COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 589, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 6, between lines 35 and 36, begin a new paragraph and insert:

"SECTION 5. IC 6-2.5-5-5.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5.1. (a) As used in this section, "tangible personal property" includes electrical energy, natural or artificial gas, water, steam, and steam heat.

(b) Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for direct consumption as a material to be consumed in the direct production of other tangible personal property in the person's business of manufacturing, processing, refining, repairing, mining, agriculture, horticulture, floriculture, or arboriculture. This exemption includes transactions involving acquisitions of tangible personal property used in commercial printing.

(c) A refund claim based on the exemption provided by this section for electrical energy, natural or artificial gas, water, steam, and steam heat may not cover transactions that occur more than twelve (12) months before the date of the refund claim.

SECTION 6. IC 6-2.5-11-10, AS AMENDED BY P.L.113-2010, SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section. A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

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(b) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

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

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

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

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

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

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

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

(g) After June 30, 2011, the department may negotiate with a certified service provider or seller to provide a monetary allowance

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that is greater than the allowance provided in IC 6-2.5-6-10 for the collection of gross retail tax or use tax on sales, leases, and rentals of goods or services made in a member state or a jurisdiction that is not a member state. A monetary allowance permitted under this subsection may not exceed ten percent (10%) of the gross retail tax or use tax collected from a sale, lease, or rental. The department may adopt emergency rules under IC 4-22-2-37.1 and shall adopt rules under IC 4-22-2 to establish standards for granting monetary allowances under this subsection. The rules must provide that the permitted monetary allowance is a negotiated rate based on:

- (1) the collection costs of the certified service provider or seller;
- (2) the volume and value to the state of sales, leases, or rentals processed by a certified service provider or seller;
- (3) the administrative and legal costs that the state would otherwise incur to collect gross retail taxes or use taxes for these sales, leases, or rentals absent a negotiated monetary allowance; and
- (4) the likelihood of collecting gross retail taxes or use taxes on these sales, leases, or rentals absent a negotiated monetary allowance."

Page 22, line 34, delete "[EFFECTIVE JANUARY 1, 2012]" and insert "[EFFECTIVE JULY 1, 2012]".

Page 22, line 40, delete "five" and insert "**six and five-tenths**".

Page 22, line 41, delete "(5%)" and insert "**(6.5%)**".

Page 23, between lines 1 and 2, begin a new paragraph and insert:

"SECTION 9. IC 6-3-2-2, AS AMENDED BY P.L.182-2009(ss), SECTION 191, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011 (RETROACTIVE)]: Sec. 2. (a) With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

- (1) income from real or tangible personal property located in this state;
- (2) income from doing business in this state;
- (3) income from a trade or profession conducted in this state;
- (4) compensation for labor or services rendered within this state; and
- (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under

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~~section 2.2 of this chapter.~~ **to the extent that the income is apportioned to Indiana under this section or if the income is allocated to Indiana or considered to be derived from sources within Indiana under this section.**

Income from a pass through entity shall be characterized in a manner consistent with the income's characterization for federal income tax purposes and shall be considered Indiana source income as if the person, corporation, or pass through entity that received the income had directly engaged in the income producing activity. Income that is derived from one (1) pass through entity and is considered to pass through to another pass through entity does not change these characteristics or attribution provisions. In the case of nonbusiness income described in subsection (g), only so much of such income as is allocated to this state under the provisions of subsections (h) through (k) shall be deemed to be derived from sources within Indiana. In the case of business income, only so much of such income as is apportioned to this state under the provision of subsection (b) shall be deemed to be derived from sources within the state of Indiana. In the case of compensation of a team member (as defined in section 2.7 of this chapter), only the portion of income determined to be Indiana income under section 2.7 of this chapter is considered derived from sources within Indiana. In the case of a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code, only so much of the income as is apportioned to Indiana under subsection (r) is considered derived from sources within Indiana.

(b) Except as provided in subsection (l), if business income of a corporation or a nonresident person is derived from sources within the state of Indiana and from sources without the state of Indiana, the business income derived from sources within this state shall be determined by multiplying the business income derived from sources both within and without the state of Indiana by the following:

(1) For all taxable years that begin after December 31, 2006, and before January 1, 2008, a fraction. The:

(A) numerator of the fraction is the sum of the property factor plus the payroll factor plus the product of the sales factor multiplied by three (3); and

(B) denominator of the fraction is five (5).

(2) For all taxable years that begin after December 31, 2007, and before January 1, 2009, a fraction. The:

(A) numerator of the fraction is the property factor plus the

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payroll factor plus the product of the sales factor multiplied by four and sixty-seven hundredths (4.67); and

(B) denominator of the fraction is six and sixty-seven hundredths (6.67).

(3) For all taxable years beginning after December 31, 2008, and before January 1, 2010, a fraction. The:

(A) numerator of the fraction is the property factor plus the payroll factor plus the product of the sales factor multiplied by eight (8); and

(B) denominator of the fraction is ten (10).

(4) For all taxable years beginning after December 31, 2009, and before January 1, 2011, a fraction. The:

(A) numerator of the fraction is the property factor plus the payroll factor plus the product of the sales factor multiplied by eighteen (18); and

(B) denominator of the fraction is twenty (20).

(5) For all taxable years beginning after December 31, 2010, the sales factor.

(c) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the taxable year. However, with respect to a foreign corporation, the denominator does not include the average value of real or tangible personal property owned or rented and used in a place that is outside the United States. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The average of property shall be determined by averaging the values at the beginning and ending of the taxable year, but the department may require the averaging of monthly values during the taxable year if reasonably required to reflect properly the average value of the taxpayer's property.

(d) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the taxable year. However, with respect to a foreign corporation, the denominator does not include compensation paid in a place that is outside the United States. Compensation is paid in this state if:

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- (1) the individual's service is performed entirely within the state;
- (2) the individual's service is performed both within and without this state, but the service performed without this state is incidental to the individual's service within this state; or
- (3) some of the service is performed in this state and:
 - (A) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this state; or
 - (B) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual is a resident of this state.

(e) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the taxable year, and the denominator of which is the total sales of the taxpayer everywhere during the taxable year. Sales include receipts from intangible property and receipts from the sale or exchange of intangible property. However, with respect to a foreign corporation, the denominator does not include sales made in a place that is outside the United States. Receipts from intangible personal property are derived from sources within Indiana if the receipts from the intangible personal property are attributable to Indiana under section 2.2 of this chapter: **to the extent that the income from the receipts would be apportioned to Indiana under this section or if the income from the receipts would be allocated to Indiana or considered to be derived from sources within Indiana under this section.** Regardless of the f.o.b. point or other conditions of the sale, sales of tangible personal property are in this state if:

- (1) the property is delivered or shipped to a purchaser that is within Indiana, other than the United States government; or
- (2) the property is shipped from an office, a store, a warehouse, a factory, or other place of storage in this state and:
 - (A) the purchaser is the United States government; or
 - (B) the taxpayer is not taxable in the state of the purchaser.

Gross receipts derived from commercial printing as described in IC 6-2.5-1-10 shall be treated as sales of tangible personal property for purposes of this chapter.

(f) Sales, other than receipts from intangible property covered by subsection (e) and sales of tangible personal property, are in this state if:

- (1) the income-producing activity is performed in this state; or
- (2) the income-producing activity is performed both within and without this state and a greater proportion of the

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income-producing activity is performed in this state than in any other state, based on costs of performance.

(g) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (h) through (k).

(h)(1) Net rents and royalties from real property located in this state are allocable to this state.

(2) Net rents and royalties from tangible personal property are allocated to this state:

- (i) if and to the extent that the property is utilized in this state; or
- (ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year, and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(i)(1) Capital gains and losses from sales of real property located in this state are allocable to this state.

(2) Capital gains and losses from sales of tangible personal property are allocable to this state if:

- (i) the property had a situs in this state at the time of the sale; or
- (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(3) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(j) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(k)(1) Patent and copyright royalties are allocable to this state:

- (i) if and to the extent that the patent or copyright is utilized by the taxpayer in this state; or
- (ii) if and to the extent that the patent or copyright is utilized by the taxpayer in a state in which the taxpayer is not taxable and the

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taxpayer's commercial domicile is in this state.

(2) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(l) If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) separate accounting;

(2) for a taxable year beginning before January 1, 2011, the exclusion of any one (1) or more of the factors, except the sales factor;

(3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or

(4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(m) In the case of two (2) or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interests, the department shall distribute, apportion, or allocate the income derived from sources within the state of Indiana between and among those organizations, trades, or businesses in order to fairly reflect and report the income derived from sources within the state of Indiana by various taxpayers, **considering the recommendations made under IC 6-8.1-3-10.**

(n) For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if:

(1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) that state has jurisdiction to subject the taxpayer to a net

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income tax regardless of whether, in fact, the state does or does not.

(o) Notwithstanding subsections (l) and (m), the department may not, under any circumstances, require that income, deductions, and credits attributable to a taxpayer and another entity be reported in a combined income tax return for any taxable year, if the other entity is:

- (1) a foreign corporation; or
- (2) a corporation that is classified as a foreign operating corporation for the taxable year by section 2.4 of this chapter.

(p) Notwithstanding subsections (l) and (m), the department may not require that income, deductions, and credits attributable to a taxpayer and another entity not described in subsection (o)(1) or (o)(2) be reported in a combined income tax return for any taxable year, unless the department is unable to fairly reflect the taxpayer's adjusted gross income for the taxable year through use of other powers granted to the department by subsections (l) and (m).

(q) Notwithstanding subsections (o) and (p), one (1) or more taxpayers may petition the department under subsection (l) for permission to file a combined income tax return for a taxable year. The petition to file a combined income tax return must be completed and filed with the department not more than thirty (30) days after the end of the taxpayer's taxable year. A taxpayer filing a combined income tax return must petition the department within thirty (30) days after the end of the taxpayer's taxable year to discontinue filing a combined income tax return.

(r) This subsection applies to a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code. The corporation's adjusted gross income that is derived from sources within Indiana is determined by multiplying the corporation's adjusted gross income by a fraction:

- (1) the numerator of which is the direct premiums and annuity considerations received during the taxable year for insurance upon property or risks in the state; and
- (2) the denominator of which is the direct premiums and annuity considerations received during the taxable year for insurance upon property or risks everywhere.

The term "direct premiums and annuity considerations" means the gross premiums received from direct business as reported in the corporation's annual statement filed with the department of insurance.

SECTION 10. IC 6-3-2-2.5, AS AMENDED BY P.L.113-2010, SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JANUARY 1, 2012]: Sec. 2.5. (a) This section applies to a resident person.

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

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

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

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

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

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

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

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

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

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

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

~~(B) that is a qualified disaster loss for which the taxpayer~~

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electd to have the net operating loss carryback period with respect to the loss year determined without regard to Section 172(b)(1)(J) of the Internal Revenue Code, five (5) years shall be used:

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

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

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

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

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

SECTION 11. IC 6-3-2-2.6, AS AMENDED BY P.L.113-2010, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2012]: Sec. 2.6. (a) This section applies to a corporation or a nonresident person.

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

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

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

(1) The modifications that are to be applied are those

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modifications required under IC 6-3-1-3.5 for the same taxable year in which each net operating loss was incurred.

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

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

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

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

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

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

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

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

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

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be used-

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

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

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

- (1) The entire amount of the Indiana net operating loss has been used as a deduction.
- (2) The Indiana net operating loss has been carried over to each of the carryover years provided by subsection (f).

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

- (1) a life insurance company (as defined in Section 816(a) of the Internal Revenue Code); or
- (2) an insurance company subject to tax under Section 831 of the Internal Revenue Code.

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

- (1) substituting the corresponding provisions of Section 810 of the Internal Revenue Code in place of references to Section 172 of the Internal Revenue Code; and
- (2) substituting life insurance company taxable income (as defined in Section 801 the Internal Revenue Code) in place of references to taxable income (as defined in Section 63 of the Internal Revenue Code).

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(j) For purposes of an amended return filed to carry back an Indiana net operating loss:

(1) the term "due date of the return", as used in IC 6-8.1-9-1(a)(1); means the due date of the return for the taxable year in which the net operating loss was incurred; and

(2) the term "date the payment was due", as used in IC 6-8.1-9-2(c); means the due date of the return for the taxable year in which the net operating loss was incurred."

Page 28, between lines 23 and 24, begin a new paragraph and insert: "SECTION 13. IC 6-3-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011 (RETROACTIVE)]: Sec. 6. (a) Any taxpayer, upon request by the department, shall furnish to the department a true and correct copy of any tax return which ~~he~~ **the taxpayer** has filed with the United States Internal Revenue Service which copy shall be certified to by the taxpayer under penalties of perjury.

(b) Each taxpayer shall notify the department of any modification of:

(1) a federal income tax return filed by the taxpayer after January 1, 1978; or

(2) the taxpayer's federal income tax liability for a taxable year which begins after December 31, 1977.

The taxpayer shall file the notice on the form prescribed by the department within one hundred twenty (120) days after the modification is made **if the modification was made before January 1, 2011, and one hundred eighty (180) days after the modification is made if the modification is made after December 31, 2010.**

(c) If the federal modification results in a change in the taxpayer's federal or Indiana adjusted gross income, the taxpayer shall file an Indiana amended return within one hundred twenty (120) days after the modification is made **if the modification was made before January 1, 2011, and one hundred eighty (180) days after the modification is made if the modification is made after December 31, 2010.**"

Page 28, delete lines 28 through 32.

Page 28, line 33, delete "(c)" and insert "(b)".

Page 28, delete lines 34 through 42.

Page 29, delete lines 1 through 23.

Page 35, delete lines 17 through 42.

Page 36, delete lines 1 through 27.

Page 37, between lines 24 and 25, begin a new paragraph and insert: "SECTION 24. IC 6-8.1-3-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) The department

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may enter into contracts with persons outside the department to provide services that the department feels are necessary to properly administer and collect the listed taxes.

(b) A contract entered into under this section must require the person providing the service to comply with the requirements governing the administration and collection of taxes by the department.

(c) The department shall enter into a contract with persons outside the department to recommend to the department the proper distribution, apportionment, or allocation of income and deductions between and among two (2) or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interests in the manner provided in IC 6-3-2-2(m).

SECTION 25. IC 6-8.1-5-1, AS AMENDED BY P.L.1-2007, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011 (RETROACTIVE)]: Sec. 1. (a) As used in this section, "letter of findings" includes a supplemental letter of findings.

(b) If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to IC 6-8.1-10 concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

(c) If the person has a surety bond guaranteeing payment of the tax for which the proposed assessment is made, the department shall furnish a copy of the proposed assessment to the surety. The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

(d) The notice shall state that the person has forty-five (45) days from the date the notice is mailed, **if the notice was mailed before January 1, 2011, and sixty (60) days from the date the notice is mailed, if the notice was mailed after December 31, 2010**, to pay the assessment or to file a written protest. If the person files a protest and requires a hearing on the protest, the department shall:

- (1) set the hearing at the department's earliest convenient time; and
- (2) notify the person by United States mail of the time, date, and location of the hearing.

(e) The department may hold the hearing at the location of its choice

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within Indiana if that location complies with IC 6-8.1-3-8.5.

(f) No later than sixty (60) days after conducting a hearing on a protest, or after making a decision on a protest when no hearing is requested, the department shall issue a letter of findings and shall send a copy of the letter through the United States mail to the person who filed the protest and to the person's surety, if the surety was notified of the proposed assessment under subsection (b). The department may continue the hearing until a later date if the taxpayer presents additional information at the hearing or the taxpayer requests an opportunity to present additional information after the hearing.

(g) A person that disagrees with a decision in a letter of findings may request a rehearing not more than thirty (30) days after the date on which the letter of findings is issued by the department. The department shall consider the request and may grant the rehearing if the department reasonably believes that a rehearing would be in the best interests of the taxpayer and the state.

(h) If a person disagrees with a decision in a letter of findings, the person may appeal the decision to the tax court. However, the tax court does not have jurisdiction to hear an appeal that is filed more than sixty (60) days after the date on which:

- (1) the letter of findings is issued by the department, if the person does not make a timely request for a rehearing under subsection (g) on the letter of findings; or
- (2) the department issues a denial of the person's timely request for a rehearing under subsection (g) on the letter of findings.

(i) The tax court shall hear an appeal under subsection (h) de novo and without a jury. The tax court may do the following:

- (1) Uphold or deny any part of the assessment that is appealed.
- (2) Assess the court costs in a manner that the court believes to be equitable.

~~(3) Enjoin the collection of a listed tax under IC 33-26-6-2.~~

(3) Take any other action permitted by law.

(j) The department shall demand payment, as provided in IC 6-8.1-8-2(a), of any part of the proposed tax assessment, interest, and penalties that it finds owing because:

- (1) the person failed to properly respond within the forty-five (45) day period;
- (2) the person requested a hearing but failed to appear at that hearing; or
- (3) after consideration of the evidence presented in the protest or hearing, the department finds that the person still owes tax.

(k) The department shall make the demand for payment in the

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manner provided in IC 6-8.1-8-2.

(l) Subsection (b) does not apply to a motor carrier fuel tax return.

SECTION 26. IC 6-8.1-8-2, AS AMENDED BY P.L.111-2006, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) Except as provided in IC 6-8.1-5-3 **and section 16 of this chapter**, the department must issue a demand notice for the payment of a tax and any interest or penalties accrued on the tax, if a person files a tax return without including full payment of the tax or if the department, after ruling on a protest, finds that a person owes the tax before the department issues a tax warrant. The demand notice must state the following:

- (1) That the person has ten (10) days from the date the department mails the notice to either pay the amount demanded or show reasonable cause for not paying the amount demanded.
- (2) The statutory authority of the department for the issuance of a tax warrant.
- (3) The earliest date on which a tax warrant may be filed and recorded.
- (4) The statutory authority for the department to levy against a person's property that is held by a financial institution.
- (5) The remedies available to the taxpayer to prevent the filing and recording of the judgment.

If the department files a tax warrant in more than one (1) county, the department is not required to issue more than one (1) demand notice.

(b) If the person does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs, and fees established under section 4(b) of this chapter when applicable. When the department issues a tax warrant, a collection fee of ten percent (10%) of the unpaid tax is added to the total amount due.

(c) When the department issues a tax warrant, it may not file the warrant with the circuit court clerk of any county in which the person owns property until at least twenty (20) days after the date the demand notice was mailed to the taxpayer. The department may also send the warrant to the sheriff of any county in which the person owns property and direct the sheriff to file the warrant with the circuit court clerk:

- (1) at least twenty (20) days after the date the demand notice was mailed to the taxpayer; and
- (2) no later than five (5) days after the date the department issues the warrant.

(d) When the circuit court clerk receives a tax warrant from the

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department or the sheriff, the clerk shall record the warrant by making an entry in the judgment debtor's column of the judgment record, listing the following:

- (1) The name of the person owing the tax.
- (2) The amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs, and fees established under section 4(b) of this chapter when applicable.
- (3) The date the warrant was filed with the clerk.

(e) When the entry is made, the total amount of the tax warrant becomes a judgment against the person owing the tax. The judgment creates a lien in favor of the state that attaches to all the person's interest in any:

- (1) chose in action in the county; and
- (2) real or personal property in the county;

excepting only negotiable instruments not yet due.

(f) A judgment obtained under this section is valid for ten (10) years from the date the judgment is filed. The department may renew the judgment for additional ten (10) year periods by filing an alias tax warrant with the circuit court clerk of the county in which the judgment previously existed.

(g) A judgment arising from a tax warrant in a county may be released by the department:

- (1) after the judgment, including all accrued interest to the date of payment, has been fully satisfied; or
- (2) if the department determines that the tax assessment or the issuance of the tax warrant was in error.

(h) If the department determines that the filing of a tax warrant was in error, the department shall mail a release of the judgment to the taxpayer and the circuit court clerk of each county where the warrant was filed. The department shall mail the release as soon as possible but no later than seven (7) days after:

- (1) the determination by the department that the filing of the warrant was in error; and
- (2) the receipt of information by the department that the judgment has been recorded under subsection (d).

(i) If the department determines that a judgment described in subsection (h) is obstructing a lawful transaction, the department shall mail a release of the judgment to the taxpayer and the circuit court clerk of each county where the judgment was filed immediately upon making the determination.

(j) A release issued under subsection (h) or (i) must state that the filing of the tax warrant was in error. Upon the request of the taxpayer,

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the department shall mail a copy of a release issued under subsection (h) or (i) to each major credit reporting company located in each county where the judgment was filed.

(k) The commissioner shall notify each state agency or officer supplied with a tax warrant list of the issuance of a release under subsection (h) or (i).

(l) If the sheriff collects the full amount of a tax warrant, the sheriff shall disburse the money collected in the manner provided in section 3(c) of this chapter. If a judgment has been partially or fully satisfied by a person's surety, the surety becomes subrogated to the department's rights under the judgment. If a sheriff releases a judgment:

- (1) before the judgment is fully satisfied;
 - (2) before the sheriff has properly disbursed the amount collected;
- or

(3) after the sheriff has returned the tax warrant to the department; the sheriff commits a Class B misdemeanor and is personally liable for the part of the judgment not remitted to the department.

SECTION 27. IC 6-8.1-8-16 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE UPON PASSAGE]: **Sec. 16. (a) This section applies without an injunction from the tax court to any assessment that is made or pending after April 30, 2011.**

(b) Except as provided in IC 6-8.1-5-3, no demand notice, warrant, levy, or proceeding in court for the collection of a listed tax or any penalties and interest on a listed tax may be issued, commenced, or conducted against a taxpayer and no lien on the taxpayer's property may be imposed until after the later of the following:

- (1) The expiration of the period in which the taxpayer may appeal the listed tax to the tax court.**
- (2) A decision of the tax court concerning the listed tax becomes final, if the taxpayer filed a timely appeal.**

SECTION 28. IC 6-8.1-9-1, AS AMENDED BY P.L.182-2009(ss), SECTION 256, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 1. (a) If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. Except as provided in subsections (f), ~~and~~ (g), and (h), in order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following:**

- (1) The due date of the return.
- (2) The date of payment.

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For purposes of this section, the due date for a return filed for the state gross retail or use tax, the gasoline tax, the special fuel tax, the motor carrier fuel tax, the oil inspection fee, or the petroleum severance tax is the end of the calendar year which contains the taxable period for which the return is filed. The claim must set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund.

(b) When the department receives a claim for refund, the department shall consider the claim for refund and shall, if the taxpayer requests, hold a hearing on the claim for refund to obtain and consider additional evidence. After considering the claim and all evidence relevant to the claim, the department shall issue a decision on the claim, stating the part, if any, of the refund allowed and containing a statement of the reasons for any part of the refund that is denied. The department shall mail a copy of the decision to the person who filed the claim. If the department allows the full amount of the refund claim, a warrant for the payment of the claim is sufficient notice of the decision.

(c) If the person disagrees with any part of the department's decision, the person may appeal the decision, regardless of whether or not the person protested the tax payment or whether or not the person has accepted a refund. The person must file the appeal with the tax court. The tax court does not have jurisdiction to hear a refund appeal suit, if:

- (1) the appeal is filed more than three (3) years after the date the claim for refund was filed with the department;
- (2) the appeal is filed more than ninety (90) days after the date the department mails the decision of denial to the person; or
- (3) the appeal is filed both before the decision is issued and before the one hundred eighty-first day after the date the person files the claim for refund with the department.

(d) The tax court shall hear the appeal de novo and without a jury, and after the hearing may order or deny any part of the appealed refund. The court may assess the court costs in any manner that it feels is equitable. ~~The court may enjoin the collection of any of the listed taxes under IC 33-26-6-2.~~ The court may also allow a refund of taxes, interest, and penalties that have been paid to and collected by the department.

(e) With respect to the motor vehicle excise tax, this section applies only to penalties and interest paid on assessments of the motor vehicle excise tax. Any other overpayment of the motor vehicle excise tax is subject to IC 6-6-5.

(f) If a taxpayer's federal income tax liability for a taxable year is

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modified by the Internal Revenue Service, and the modification would result in a reduction of the tax legally due, the due date by which the taxpayer must file a claim for refund with the department is the later of:

- (1) the date determined under subsection (a); or
- (2) the date that is ~~six (6) months~~ **one hundred eighty (180) days** after the date on which the taxpayer is notified of the modification by the Internal Revenue Service.

(g) If an agreement to extend the assessment time period is entered into under IC 6-8.1-5-2(h), the period during which a person may file a claim for a refund under subsection (a) is extended to the same date to which the assessment time period is extended.

(h) If a taxpayer's claim for a refund of gross retail or use tax is based on:

- (1) IC 6-2.5-4-5(c)(3); or**
- (2) the exemption provided by IC 6-2.5-5-5.1 for electrical energy, natural or artificial gas, water, steam, and steam heat; the person must file the claim with the department within one (1) year after the date of payment.**

SECTION 29. IC 6-8.1-9-2, AS AMENDED BY P.L.182-2009(ss), SECTION 257, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011 (RETROACTIVE)]: Sec. 2. (a) If the department finds that a person has paid more tax for a taxable year than is legally due, the department shall apply the amount of the excess against any amount of that same tax that is assessed and is currently due. The department may then apply any remaining excess against any of the listed taxes that have been assessed against the person and that are currently due. Subject to subsection (c), if any excess remains after the department has applied the overpayment against the person's tax liabilities, the department shall either refund the amount to the person or, at the person's request, credit the amount to the person's future tax liabilities.

(b) Subject to subsection (c), if a court determines that a person has paid more tax for a taxable year than is legally due, the department shall refund the excess amount to the person.

(c) As used in this subsection, "pass through entity" means a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2), a partnership, a limited liability company, or a limited liability partnership and "pass through income" means a person's distributive share of adjusted gross income for a taxable year attributable to the person's interest in a pass through entity. This subsection applies to a person's overpayment of adjusted gross income tax for a taxable year if:

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- (1) the person has filed a timely claim for refund with respect to the overpayment under IC 6-8.1-9-1;
- (2) the overpayment:
 - (A) is with respect to a taxable year beginning before January 1, 2009;
 - (B) is attributable to amounts paid to the department by:
 - (i) a nonresident shareholder, partner, or member of a pass through entity;
 - (ii) a pass through entity under IC 6-3-4-12 or IC 6-3-4-13 on behalf of a nonresident shareholder, partner, or member of the pass through entity; or
 - (iii) a pass through entity under IC 6-3-4-12 or IC 6-3-4-13 on behalf of a nonresident shareholder, partner, or member of another pass through entity; and
- (3) the overpayment arises from a determination by the department or a court that the person's pass through income is not includible in the person's adjusted gross income derived from sources within Indiana as a result of the application of IC 6-3-2-2(a)(5). ~~and IC 6-3-2-2.2(g).~~

The department shall apply the overpayment to the person's liability for taxes that have been assessed and are currently due as provided in subsection (a) and apply any remaining overpayment as a credit or credits in satisfaction of the person's liability for listed taxes in taxable years beginning after December 31, 2008. If the person, including any successor to the person's interest in the overpayment, does not have sufficient liability for listed taxes against which to credit all the remaining overpayment in a taxable year beginning after December 31, 2008, and ending before January 1, 2019, the taxpayer is not entitled for any taxable year ending after December 31, 2018, to have any part of the remaining overpayment applied, refunded, or credited to the person's liability for listed taxes. If an overpayment or part of an overpayment is required to be applied as a credit under this subsection to the person's liability for listed taxes for a taxable year beginning after December 31, 2008, and has not been determined by the department or a court to meet the conditions of subdivision (3) by the due date of the person's return for a listed tax for a taxable year beginning after December 31, 2008, the department shall refund to the person that part of the overpayment that should have been applied as a credit for such taxable year within ninety (90) days of the date that the department or a court makes the determination that the overpayment meets the conditions of subdivision (3). However, the department may establish a program to refund small overpayment amounts that do not exceed the

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threshold dollar value established by the department rather than crediting the amounts against tax liability accruing for a taxable year after December 31, 2008. A person that receives a refund or credit under this subsection shall file a report with the department in the form and in the schedule specified by the department that identifies under penalties of perjury the home state or other jurisdiction where the income subject to the refund or credit was reported as income attributable to that state or jurisdiction.

(d) An excess tax payment that is not refunded or credited against a current or future tax liability within ninety (90) days after the date the refund claim is filed, the date the tax payment was due, or the date the tax was paid, whichever is latest, accrues interest from the date the refund claim is filed at the rate established under IC 6-8.1-10-1 until a date, determined by the department, that does not precede by more than thirty (30) days, the date on which the refund or credit is made. As used in this subsection, "refund claim" includes an amended return that indicates an overpayment of tax."

Page 38, between lines 15 and 16, begin a new paragraph and insert:

"SECTION 33. IC 33-26-6-2, AS AMENDED BY P.L.91-2006, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) A taxpayer who wishes to initiate an original tax appeal must file a petition in the tax court to set aside the final determination of the department of state revenue or the Indiana board of tax review. If a taxpayer fails to comply with any statutory requirement for the initiation of an original tax appeal, the tax court does not have jurisdiction to hear the appeal.

(b) **If a taxpayer who wishes to enjoin the collection of a tax pending the original tax appeal and the collection action is not prohibited under IC 6-8.1-8-16, the taxpayer** must file a petition with the tax court to enjoin the collection of the tax. The petition must set forth a summary of:

- (1) the issues that the petitioner will raise in the original tax appeal; and
- (2) the equitable considerations for which the tax court should order the collection of the tax to be enjoined.

(c) After a hearing on the petition filed under subsection (b), the tax court may enjoin the collection of the tax pending the original tax appeal, if the tax court finds that:

- (1) the issues raised by the original tax appeal are substantial;
- (2) the petitioner has a reasonable opportunity to prevail in the original tax appeal; and
- (3) the equitable considerations favoring the enjoining of the

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collection of the tax outweigh the state's interests in collecting the tax pending the original tax appeal.

(d) This section does not apply to a final determination of the Indiana gaming commission under IC 4-32.2.

(e) This section applies to a final determination made by the department of state revenue concerning the gaming card excise tax established under IC 4-32.2-10.

SECTION 34. IC 33-26-6-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2.5. (a) A taxpayer may petition the tax court to enjoin a violation of IC 6-8.1-8-16.**

(b) After a hearing on a petition filed under subsection (a), the tax court may:

- (1) enjoin a collection action that violates IC 6-8.1-8-16;**
- (2) order the release of any lien imposed in violation of IC 6-8.1-8-16; and**
- (3) order a refund of any amount that was collected in violation of IC 6-8.1-8-16."**

Page 40, between lines 4 and 5, begin a new paragraph and insert: "SECTION 35. IC 36-7.6-4-2, AS ADDED BY P.L.232-2007, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 2. (a)** Beginning January 1 of the year following the year in which a development authority is established, the fiscal officer of each county and each municipality that is a member of the development authority shall transfer the amount determined under subsection (b) to the development authority for deposit in the development authority fund.

(b) The amount of the transfer required each year by subsection (a) from each county and each municipality is equal to **the following:**

- (1) Except as provided in subdivision (2),** the amount that would be distributed to the county or the municipality as certified distributions of county economic development income tax revenue raised from a county economic development income tax rate of five-hundredths of one percent (0.05%) in the county.
- (2) In the case of a county or municipality that becomes a member of a development authority after June 30, 2011, and before July 1, 2013,** the amount that would be distributed to the county or municipality as certified distributions of county economic development income tax revenue raised from a county economic development income tax rate of twenty-five thousandths of one percent (0.025%) in the county.

(c) Notwithstanding subsection (b), if the additional county

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economic development income tax under IC 6-3.5-7-28 is in effect in a county, the obligations of the county and each municipality in the county under this section are satisfied by the transfer to the development fund of all county economic development income tax revenue derived from the additional tax and deposited in the county regional development authority fund.

(d) The following apply to the transfers required by this section:

(1) The transfers shall be made without appropriation by the fiscal body of the county or the fiscal body of the municipality.

(2) Except as provided in subdivision (3), the fiscal officer of each county and each municipality that is a member of the development authority shall transfer twenty-five percent (25%) of the total transfers due for the year before the last business day of January, April, July, and October of each year.

(3) County economic development income tax revenue derived from the additional county economic development income tax under IC 6-3.5-7-28 must be transferred to the development fund not more than thirty (30) days after being deposited in the county regional development fund.

(4) This subdivision does not apply to a county in which the additional county economic development income tax under IC 6-3.5-7-28 has been imposed or to any municipality in the county. The transfers required by this section may be made from any local revenue (other than property tax revenue) of the county or municipality, including excise tax revenue, income tax revenue, local option tax revenue, riverboat tax revenue, distributions, incentive payments, or money deposited in the county's or municipality's local major moves construction fund under IC 8-14-16.

SECTION 36. IC 6-3-2-2.2 IS REPEALED [EFFECTIVE JANUARY 1, 2011 (RETROACTIVE)]."

Page 40, line 6, delete "IC 6-5.5-2-1,".

Page 40, after line 9, begin a new paragraph and insert:

"SECTION 38. [EFFECTIVE JANUARY 1, 2011 (RETROACTIVE)] (a) **IC 6-3-2-2, as amended by this act, applies to taxable years beginning after December 31, 2010.**

(b) This SECTION expires January 1, 2014.

SECTION 39. [EFFECTIVE JULY 1, 2012] (a) **This SECTION applies to a corporate taxpayer that:**

(1) pays adjusted gross income tax under IC 6-3-1 through IC 6-3-7; and

(2) has a taxable year that begins before July 1, 2012, and

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ends after June 30, 2012.

(b) Subject to subsection (c), the rate of the adjusted gross income tax imposed under IC 6-3-2-1 for that taxable year is a rate equal to the sum of:

(1) eight and five-tenths percent (8.5%) multiplied by a fraction, the numerator of which is the number of days in the taxpayer's taxable year that occurred before July 1, 2012, and the denominator of which is the total number of days in the taxable year; and

(2) six and five-tenths percent (6.5%) multiplied by a fraction, the numerator of which is the number of days in the taxpayer's taxable year that occurred after June 30, 2012, and the denominator of which is the total number of days in the taxable year.

(c) However, the rate determined under this section shall be rounded to the nearest one-hundredth of one percent (0.01%).

(d) This SECTION expires January 1, 2015.

SECTION 40. An emergency is declared for this act."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 589 as introduced.)

HERSHMAN, Chairperson

Committee Vote: Yeas 8, Nays 2.

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