

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:

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

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

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

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

18 SECTION 6. IC 6-2.5-11-10, AS AMENDED BY P.L.113-2010,
19 SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

1 UPON PASSAGE]: Sec. 10. (a) A certified service provider is the
2 agent of a seller, with whom the certified service provider has
3 contracted, for the collection and remittance of sales and use taxes. As
4 the seller's agent, the certified service provider is liable for sales and
5 use tax due each member state on all sales transactions it processes for
6 the seller except as set out in this section. A seller that contracts with
7 a certified service provider is not liable to the state for sales or use tax
8 due on transactions processed by the certified service provider unless
9 the seller misrepresented the type of items it sells or committed fraud.
10 In the absence of probable cause to believe that the seller has
11 committed fraud or made a material misrepresentation, the seller is not
12 subject to audit on the transactions processed by the certified service
13 provider. A seller is subject to audit for transactions not processed by
14 the certified service provider. The member states acting jointly may
15 perform a system check of the seller and review the seller's procedures
16 to determine if the certified service provider's system is functioning
17 properly and the extent to which the seller's transactions are being
18 processed by the certified service provider.

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

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

29 (d) A certified service provider or a seller using a certified
30 automated system that obtains a certification or taxability matrix from
31 the department is not liable for sales or use tax collection errors that
32 result from reliance on the department's certification or taxability
33 matrix. If the department determines that an item or transaction is
34 incorrectly classified as to the taxability of the item or transaction, the
35 department shall notify the certified service provider or the seller using
36 a certified automated system of the incorrect classification. The
37 certified service provider or the seller using a certified automated
38 system must revise the incorrect classification within ten (10) days

1 after receiving notice of the determination from the department. If the
2 classification error is not corrected within ten (10) days after receiving
3 the department's notice, the certified service provider or the seller using
4 a certified automated system is liable for failure to collect the correct
5 amount of sales or use tax due and owing.

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

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

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

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

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

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

33 (1) the collection costs of the certified service provider or
34 seller;

35 (2) the volume and value to the state of sales, leases, or rentals
36 processed by a certified service provider or seller;

37 (3) the administrative and legal costs that the state would
38 otherwise incur to collect gross retail taxes or use taxes for

1 **these sales, leases, or rentals absent a negotiated monetary**
 2 **allowance; and**
 3 **(4) the likelihood of collecting gross retail taxes or use taxes**
 4 **on these sales, leases, or rentals absent a negotiated monetary**
 5 **allowance."**

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

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

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

10 Page 23, between lines 1 and 2, begin a new paragraph and insert:
 11 "SECTION 9. IC 6-3-2-2, AS AMENDED BY P.L.182-2009(ss),
 12 SECTION 191, IS AMENDED TO READ AS FOLLOWS
 13 [EFFECTIVE JANUARY 1, 2011 (RETROACTIVE)]: Sec. 2. (a) With
 14 regard to corporations and nonresident persons, "adjusted gross income
 15 derived from sources within Indiana", for the purposes of this article,
 16 shall mean and include:

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

31 Income from a pass through entity shall be characterized in a manner
 32 consistent with the income's characterization for federal income tax
 33 purposes and shall be considered Indiana source income as if the
 34 person, corporation, or pass through entity that received the income had
 35 directly engaged in the income producing activity. Income that is
 36 derived from one (1) pass through entity and is considered to pass
 37 through to another pass through entity does not change these
 38 characteristics or attribution provisions. In the case of nonbusiness

1 income described in subsection (g), only so much of such income as is
 2 allocated to this state under the provisions of subsections (h) through
 3 (k) shall be deemed to be derived from sources within Indiana. In the
 4 case of business income, only so much of such income as is
 5 apportioned to this state under the provision of subsection (b) shall be
 6 deemed to be derived from sources within the state of Indiana. In the
 7 case of compensation of a team member (as defined in section 2.7 of
 8 this chapter), only the portion of income determined to be Indiana
 9 income under section 2.7 of this chapter is considered derived from
 10 sources within Indiana. In the case of a corporation that is a life
 11 insurance company (as defined in Section 816(a) of the Internal
 12 Revenue Code) or an insurance company that is subject to tax under
 13 Section 831 of the Internal Revenue Code, only so much of the income
 14 as is apportioned to Indiana under subsection (r) is considered derived
 15 from sources within Indiana.

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

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

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

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

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

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

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

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

37 (A) numerator of the fraction is the property factor plus the
 38 payroll factor plus the product of the sales factor multiplied by

- 1 eight (8); and
- 2 (B) denominator of the fraction is ten (10).
- 3 (4) For all taxable years beginning after December 31, 2009, and
- 4 before January 1, 2011, a fraction. The:
- 5 (A) numerator of the fraction is the property factor plus the
- 6 payroll factor plus the product of the sales factor multiplied by
- 7 eighteen (18); and
- 8 (B) denominator of the fraction is twenty (20).
- 9 (5) For all taxable years beginning after December 31, 2010, the
- 10 sales factor.
- 11 (c) The property factor is a fraction, the numerator of which is the
- 12 average value of the taxpayer's real and tangible personal property
- 13 owned or rented and used in this state during the taxable year and the
- 14 denominator of which is the average value of all the taxpayer's real and
- 15 tangible personal property owned or rented and used during the taxable
- 16 year. However, with respect to a foreign corporation, the denominator
- 17 does not include the average value of real or tangible personal property
- 18 owned or rented and used in a place that is outside the United States.
- 19 Property owned by the taxpayer is valued at its original cost. Property
- 20 rented by the taxpayer is valued at eight (8) times the net annual rental
- 21 rate. Net annual rental rate is the annual rental rate paid by the taxpayer
- 22 less any annual rental rate received by the taxpayer from subrentals.
- 23 The average of property shall be determined by averaging the values at
- 24 the beginning and ending of the taxable year, but the department may
- 25 require the averaging of monthly values during the taxable year if
- 26 reasonably required to reflect properly the average value of the
- 27 taxpayer's property.
- 28 (d) The payroll factor is a fraction, the numerator of which is the
- 29 total amount paid in this state during the taxable year by the taxpayer
- 30 for compensation, and the denominator of which is the total
- 31 compensation paid everywhere during the taxable year. However, with
- 32 respect to a foreign corporation, the denominator does not include
- 33 compensation paid in a place that is outside the United States.
- 34 Compensation is paid in this state if:
- 35 (1) the individual's service is performed entirely within the state;
- 36 (2) the individual's service is performed both within and without
- 37 this state, but the service performed without this state is incidental
- 38 to the individual's service within this state; or

- 1 (3) some of the service is performed in this state and:
 2 (A) the base of operations or, if there is no base of operations,
 3 the place from which the service is directed or controlled is in
 4 this state; or
 5 (B) the base of operations or the place from which the service
 6 is directed or controlled is not in any state in which some part
 7 of the service is performed, but the individual is a resident of
 8 this state.

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

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

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

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

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

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

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

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

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

11 (i) if and to the extent that the property is utilized in this state; or

12 (ii) in their entirety if the taxpayer's commercial domicile is in this
13 state and the taxpayer is not organized under the laws of or
14 taxable in the state in which the property is utilized.

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

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

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

29 (i) the property had a situs in this state at the time of the sale; or

30 (ii) the taxpayer's commercial domicile is in this state and the
31 taxpayer is not taxable in the state in which the property had a
32 situs.

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

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

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

- 1 (i) if and to the extent that the patent or copyright is utilized by
 2 the taxpayer in this state; or
- 3 (ii) if and to the extent that the patent or copyright is utilized by
 4 the taxpayer in a state in which the taxpayer is not taxable and the
 5 taxpayer's commercial domicile is in this state.
- 6 (2) A patent is utilized in a state to the extent that it is employed
 7 in production, fabrication, manufacturing, or other processing in
 8 the state or to the extent that a patented product is produced in the
 9 state. If the basis of receipts from patent royalties does not permit
 10 allocation to states or if the accounting procedures do not reflect
 11 states of utilization, the patent is utilized in the state in which the
 12 taxpayer's commercial domicile is located.
- 13 (3) A copyright is utilized in a state to the extent that printing or
 14 other publication originates in the state. If the basis of receipts
 15 from copyright royalties does not permit allocation to states or if
 16 the accounting procedures do not reflect states of utilization, the
 17 copyright is utilized in the state in which the taxpayer's
 18 commercial domicile is located.
- 19 (l) If the allocation and apportionment provisions of this article do
 20 not fairly represent the taxpayer's income derived from sources within
 21 the state of Indiana, the taxpayer may petition for or the department
 22 may require, in respect to all or any part of the taxpayer's business
 23 activity, if reasonable:
- 24 (1) separate accounting;
- 25 (2) for a taxable year beginning before January 1, 2011, the
 26 exclusion of any one (1) or more of the factors, except the sales
 27 factor;
- 28 (3) the inclusion of one (1) or more additional factors which will
 29 fairly represent the taxpayer's income derived from sources within
 30 the state of Indiana; or
- 31 (4) the employment of any other method to effectuate an equitable
 32 allocation and apportionment of the taxpayer's income.
- 33 (m) In the case of two (2) or more organizations, trades, or
 34 businesses owned or controlled directly or indirectly by the same
 35 interests, the department shall distribute, apportion, or allocate the
 36 income derived from sources within the state of Indiana between and
 37 among those organizations, trades, or businesses in order to fairly
 38 reflect and report the income derived from sources within the state of

1 Indiana by various taxpayers, **considering the recommendations**
 2 **made under IC 6-8.1-3-10.**

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

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

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

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

15 (1) a foreign corporation; or

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

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

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

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

- 1 corporation's adjusted gross income by a fraction:
- 2 (1) the numerator of which is the direct premiums and annuity
- 3 considerations received during the taxable year for insurance
- 4 upon property or risks in the state; and
- 5 (2) the denominator of which is the direct premiums and annuity
- 6 considerations received during the taxable year for insurance
- 7 upon property or risks everywhere.

8 The term "direct premiums and annuity considerations" means the

9 gross premiums received from direct business as reported in the

10 corporation's annual statement filed with the department of insurance.

11 SECTION 10. IC 6-3-2-2.5, AS AMENDED BY P.L.113-2010,

12 SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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

14 person.

15 (b) Resident persons are entitled to a net operating loss deduction.

16 The amount of the deduction taken in a taxable year may not exceed

17 the taxpayer's unused Indiana net operating losses ~~carried back or~~

18 carried over to that year. **A taxpayer is not entitled to carryback any**

19 **net operating losses after December 31, 2011.**

20 (c) An Indiana net operating loss equals the taxpayer's federal net

21 operating loss for a taxable year as calculated under Section 172 of the

22 Internal Revenue Code, adjusted for the modifications required by

23 IC 6-3-1-3.5.

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

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

26 modifications required under IC 6-3-1-3.5 for the same taxable

27 year in which each net operating loss was incurred.

28 (2) An Indiana net operating loss includes a net operating loss that

29 arises when the modifications required by IC 6-3-1-3.5 exceed the

30 taxpayer's federal adjusted gross income (as defined in Section 62

31 of the Internal Revenue Code) for the taxable year in which the

32 Indiana net operating loss is determined.

33 (e) Subject to the limitations contained in subsection (g), an Indiana

34 net operating loss ~~carryback or~~ carryover shall be available as a

35 deduction from the taxpayer's adjusted gross income (as defined in

36 IC 6-3-1-3.5) in the ~~carryback or~~ carryover year provided in subsection

37 (f).

38 (f) ~~Carrybacks and~~ Carryovers shall be determined under this

1 subsection as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (e) Subject to the limitations contained in subsection (g), an Indiana

1 net operating loss ~~carryback or~~ carryover shall be available as a
 2 deduction from the taxpayer's adjusted gross income derived from
 3 sources within Indiana (as defined in section 2 of this chapter) in the
 4 ~~carryback or~~ carryover year provided in subsection (f).

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

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

10 ~~(2) (1) An Indiana net operating loss shall be an Indiana net~~
 11 ~~operating loss carryover to each of the carryover years following~~
 12 ~~the taxable year of the loss.~~

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

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

21 ~~(B) that is a qualified disaster loss for which the taxpayer~~
 22 ~~elected to have the net operating loss carryback period with~~
 23 ~~respect to the loss year determined without regard to Section~~
 24 ~~172(b)(1)(J) of the Internal Revenue Code; five (5) years shall~~
 25 ~~be used.~~

26 ~~(4) (2) Carryover years shall be determined by reference to the~~
 27 ~~number of years allowed for carrying over net operating losses~~
 28 ~~under Section 172(b) of the Internal Revenue Code.~~

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

34 (g) The entire amount of the Indiana net operating loss for any
 35 taxable year shall be carried to the earliest of the taxable years to which
 36 (as determined under subsection (f)) the loss may be carried. The
 37 amount of the Indiana net operating loss remaining after the deduction
 38 is taken under this section in a taxable year may be ~~carried back or~~

1 carried over as provided in subsection (f). The amount of the Indiana
 2 net operating loss ~~carried back or~~ carried over from year to year shall
 3 be reduced to the extent that the Indiana net operating loss ~~carryback~~
 4 ~~or~~ carryover is used by the taxpayer to obtain a deduction in a taxable
 5 year until the occurrence of the earlier of the following:

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

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

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

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

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

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

22 (1) substituting the corresponding provisions of Section 810 of the
 23 Internal Revenue Code in place of references to Section 172 of
 24 the Internal Revenue Code; and

25 (2) substituting life insurance company taxable income (as
 26 defined in Section 801 the Internal Revenue Code) in place of
 27 references to taxable income (as defined in Section 63 of the
 28 Internal Revenue Code).

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

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

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

37 Page 28, between lines 23 and 24, begin a new paragraph and insert:

38 "SECTION 13. IC 6-3-4-6 IS AMENDED TO READ AS

1 FOLLOWS [EFFECTIVE JANUARY 1, 2011 (RETROACTIVE)]:
 2 Sec. 6. (a) Any taxpayer, upon request by the department, shall furnish
 3 to the department a true and correct copy of any tax return which ~~he~~ **the**
 4 **taxpayer** has filed with the United States Internal Revenue Service
 5 which copy shall be certified to by the taxpayer under penalties of
 6 perjury.

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

9 (1) a federal income tax return filed by the taxpayer after January
 10 1, 1978; or

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

13 The taxpayer shall file the notice on the form prescribed by the
 14 department within one hundred twenty (120) days after the
 15 modification is made **if the modification was made before January**
 16 **1, 2011, and one hundred eighty (180) days after the modification**
 17 **is made if the modification is made after December 31, 2010.**

18 (c) If the federal modification results in a change in the taxpayer's
 19 federal or Indiana adjusted gross income, the taxpayer shall file an
 20 Indiana amended return within one hundred twenty (120) days after the
 21 modification is made **if the modification was made before January**
 22 **1, 2011, and one hundred eighty (180) days after the modification**
 23 **is made if the modification is made after December 31, 2010."**

24 Page 28, delete lines 28 through 32.

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

26 Page 28, delete lines 34 through 42.

27 Page 29, delete lines 1 through 23.

28 Page 35, delete lines 17 through 42.

29 Page 36, delete lines 1 through 27.

30 Page 37, between lines 24 and 25, begin a new paragraph and insert:

31 "SECTION 24. IC 6-8.1-3-10 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) The department
 33 may enter into contracts with persons outside the department to provide
 34 services that the department feels are necessary to properly administer
 35 and collect the listed taxes.

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

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

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

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

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

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

32 (1) set the hearing at the department's earliest convenient time;
 33 and

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

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

38 (f) No later than sixty (60) days after conducting a hearing on a

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

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

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

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

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

- 26 (1) Uphold or deny any part of the assessment that is appealed.
- 27 (2) Assess the court costs in a manner that the court believes to be
 28 equitable.
- 29 ~~(3) Enjoin the collection of a listed tax under IC 33-26-6-2.~~
- 30 **(3) Take any other action permitted by law.**

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

- 34 (1) the person failed to properly respond within the forty-five (45)
 35 day period;
- 36 (2) the person requested a hearing but failed to appear at that
 37 hearing; or
- 38 (3) after consideration of the evidence presented in the protest or

1 hearing, the department finds that the person still owes tax.

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

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

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

14 (1) That the person has ten (10) days from the date the department
15 mails the notice to either pay the amount demanded or show
16 reasonable cause for not paying the amount demanded.

17 (2) The statutory authority of the department for the issuance of
18 a tax warrant.

19 (3) The earliest date on which a tax warrant may be filed and
20 recorded.

21 (4) The statutory authority for the department to levy against a
22 person's property that is held by a financial institution.

23 (5) The remedies available to the taxpayer to prevent the filing
24 and recording of the judgment.

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

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

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

- 1 and direct the sheriff to file the warrant with the circuit court clerk:
- 2 (1) at least twenty (20) days after the date the demand notice was
- 3 mailed to the taxpayer; and
- 4 (2) no later than five (5) days after the date the department issues
- 5 the warrant.
- 6 (d) When the circuit court clerk receives a tax warrant from the
- 7 department or the sheriff, the clerk shall record the warrant by making
- 8 an entry in the judgment debtor's column of the judgment record,
- 9 listing the following:
- 10 (1) The name of the person owing the tax.
- 11 (2) The amount of the tax, interest, penalties, collection fee,
- 12 sheriff's costs, clerk's costs, and fees established under section
- 13 4(b) of this chapter when applicable.
- 14 (3) The date the warrant was filed with the clerk.
- 15 (e) When the entry is made, the total amount of the tax warrant
- 16 becomes a judgment against the person owing the tax. The judgment
- 17 creates a lien in favor of the state that attaches to all the person's
- 18 interest in any:
- 19 (1) chose in action in the county; and
- 20 (2) real or personal property in the county;
- 21 excepting only negotiable instruments not yet due.
- 22 (f) A judgment obtained under this section is valid for ten (10) years
- 23 from the date the judgment is filed. The department may renew the
- 24 judgment for additional ten (10) year periods by filing an alias tax
- 25 warrant with the circuit court clerk of the county in which the judgment
- 26 previously existed.
- 27 (g) A judgment arising from a tax warrant in a county may be
- 28 released by the department:
- 29 (1) after the judgment, including all accrued interest to the date of
- 30 payment, has been fully satisfied; or
- 31 (2) if the department determines that the tax assessment or the
- 32 issuance of the tax warrant was in error.
- 33 (h) If the department determines that the filing of a tax warrant was
- 34 in error, the department shall mail a release of the judgment to the
- 35 taxpayer and the circuit court clerk of each county where the warrant
- 36 was filed. The department shall mail the release as soon as possible but
- 37 no later than seven (7) days after:
- 38 (1) the determination by the department that the filing of the

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

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

9 (j) A release issued under subsection (h) or (i) must state that the
 10 filing of the tax warrant was in error. Upon the request of the taxpayer,
 11 the department shall mail a copy of a release issued under subsection
 12 (h) or (i) to each major credit reporting company located in each county
 13 where the judgment was filed.

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

17 (l) If the sheriff collects the full amount of a tax warrant, the sheriff
 18 shall disburse the money collected in the manner provided in section
 19 3(c) of this chapter. If a judgment has been partially or fully satisfied
 20 by a person's surety, the surety becomes subrogated to the department's
 21 rights under the judgment. If a sheriff releases a judgment:

- 22 (1) before the judgment is fully satisfied;
 23 (2) before the sheriff has properly disbursed the amount collected;
 24 or
 25 (3) after the sheriff has returned the tax warrant to the department;
 26 the sheriff commits a Class B misdemeanor and is personally liable for
 27 the part of the judgment not remitted to the department.

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

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

1 **(1) The expiration of the period in which the taxpayer may**
 2 **appeal the listed tax to the tax court.**

3 **(2) A decision of the tax court concerning the listed tax**
 4 **becomes final, if the taxpayer filed a timely appeal.**

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

13 (1) The due date of the return.

14 (2) The date of payment.

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

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

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

38 (1) the appeal is filed more than three (3) years after the date the

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

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

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

18 (f) If a taxpayer's federal income tax liability for a taxable year is
 19 modified by the Internal Revenue Service, and the modification would
 20 result in a reduction of the tax legally due, the due date by which the
 21 taxpayer must file a claim for refund with the department is the later of:

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

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

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

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

37 SECTION 29. IC 6-8.1-9-2, AS AMENDED BY P.L.182-2009(ss),
 38 SECTION 257, IS AMENDED TO READ AS FOLLOWS

1 [EFFECTIVE JANUARY 1, 2011 (RETROACTIVE)]: Sec. 2. (a) If the
 2 department finds that a person has paid more tax for a taxable year than
 3 is legally due, the department shall apply the amount of the excess
 4 against any amount of that same tax that is assessed and is currently
 5 due. The department may then apply any remaining excess against any
 6 of the listed taxes that have been assessed against the person and that
 7 are currently due. Subject to subsection (c), if any excess remains after
 8 the department has applied the overpayment against the person's tax
 9 liabilities, the department shall either refund the amount to the person
 10 or, at the person's request, credit the amount to the person's future tax
 11 liabilities.

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

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

23 (1) the person has filed a timely claim for refund with respect to
 24 the overpayment under IC 6-8.1-9-1;

25 (2) the overpayment:

26 (A) is with respect to a taxable year beginning before January
 27 1, 2009;

28 (B) is attributable to amounts paid to the department by:

29 (i) a nonresident shareholder, partner, or member of a pass
 30 through entity;

31 (ii) a pass through entity under IC 6-3-4-12 or IC 6-3-4-13
 32 on behalf of a nonresident shareholder, partner, or member
 33 of the pass through entity; or

34 (iii) a pass through entity under IC 6-3-4-12 or IC 6-3-4-13
 35 on behalf of a nonresident shareholder, partner, or member
 36 of another pass through entity; and

37 (3) the overpayment arises from a determination by the
 38 department or a court that the person's pass through income is not

1 includible in the person's adjusted gross income derived from
2 sources within Indiana as a result of the application of
3 IC 6-3-2-2(a)(5). ~~and IC 6-3-2-2(g).~~

4 The department shall apply the overpayment to the person's liability for
5 taxes that have been assessed and are currently due as provided in
6 subsection (a) and apply any remaining overpayment as a credit or
7 credits in satisfaction of the person's liability for listed taxes in taxable
8 years beginning after December 31, 2008. If the person, including any
9 successor to the person's interest in the overpayment, does not have
10 sufficient liability for listed taxes against which to credit all the
11 remaining overpayment in a taxable year beginning after December 31,
12 2008, and ending before January 1, 2019, the taxpayer is not entitled
13 for any taxable year ending after December 31, 2018, to have any part
14 of the remaining overpayment applied, refunded, or credited to the
15 person's liability for listed taxes. If an overpayment or part of an
16 overpayment is required to be applied as a credit under this subsection
17 to the person's liability for listed taxes for a taxable year beginning after
18 December 31, 2008, and has not been determined by the department or
19 a court to meet the conditions of subdivision (3) by the due date of the
20 person's return for a listed tax for a taxable year beginning after
21 December 31, 2008, the department shall refund to the person that part
22 of the overpayment that should have been applied as a credit for such
23 taxable year within ninety (90) days of the date that the department or
24 a court makes the determination that the overpayment meets the
25 conditions of subdivision (3). However, the department may establish
26 a program to refund small overpayment amounts that do not exceed the
27 threshold dollar value established by the department rather than
28 crediting the amounts against tax liability accruing for a taxable year
29 after December 31, 2008. A person that receives a refund or credit
30 under this subsection shall file a report with the department in the form
31 and in the schedule specified by the department that identifies under
32 penalties of perjury the home state or other jurisdiction where the
33 income subject to the refund or credit was reported as income
34 attributable to that state or jurisdiction.

35 (d) An excess tax payment that is not refunded or credited against
36 a current or future tax liability within ninety (90) days after the date the
37 refund claim is filed, the date the tax payment was due, or the date the
38 tax was paid, whichever is latest, accrues interest from the date the

1 refund claim is filed at the rate established under IC 6-8.1-10-1 until a
 2 date, determined by the department, that does not precede by more than
 3 thirty (30) days, the date on which the refund or credit is made. As used
 4 in this subsection, "refund claim" includes an amended return that
 5 indicates an overpayment of tax."

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

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

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

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

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

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

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

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

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

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

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

38 SECTION 34. IC 33-26-6-2.5 IS ADDED TO THE INDIANA

1 CODE AS A NEW SECTION TO READ AS FOLLOWS
 2 [EFFECTIVE UPON PASSAGE]: **Sec. 2.5. (a) A taxpayer may**
 3 **petition the tax court to enjoin a violation of IC 6-8.1-8-16.**

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

6 **(1) enjoin a collection action that violates IC 6-8.1-8-16;**

7 **(2) order the release of any lien imposed in violation of**
 8 **IC 6-8.1-8-16; and**

9 **(3) order a refund of any amount that was collected in**
 10 **violation of IC 6-8.1-8-16."**

11 Page 40, between lines 4 and 5, begin a new paragraph and insert:

12 "SECTION 35. IC 36-7.6-4-2, AS ADDED BY P.L.232-2007,
 13 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2011]: Sec. 2. (a) Beginning January 1 of the year following
 15 the year in which a development authority is established, the fiscal
 16 officer of each county and each municipality that is a member of the
 17 development authority shall transfer the amount determined under
 18 subsection (b) to the development authority for deposit in the
 19 development authority fund.

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

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

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

34 (c) Notwithstanding subsection (b), if the additional county
 35 economic development income tax under IC 6-3.5-7-28 is in effect in
 36 a county, the obligations of the county and each municipality in the
 37 county under this section are satisfied by the transfer to the
 38 development fund of all county economic development income tax

1 revenue derived from the additional tax and deposited in the county
2 regional development authority fund.

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

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

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

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

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

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

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

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

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

33 (b) **This SECTION expires January 1, 2014.**

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

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

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

1 ends after June 30, 2012.

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

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

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

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

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

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

19 Renumber all SECTIONS consecutively.

(Reference is to SB 589 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 8, Nays 2.

Hershman

Chairperson