

HOUSE BILL No. 1296

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3-2-2.

Synopsis: Apportionment of broadcaster income. Provides that, for purposes of the statute specifying the amount of income attributable to Indiana for income tax purposes, sales of a broadcaster that arise from or relate to the broadcast or other distribution of film or radio programming by any means are in Indiana if the commercial domicile of the broadcaster's customer is in Indiana.

Effective: January 1, 2014.

Karickhoff, Porter

January 14, 2013, read first time and referred to Committee on Ways and Means.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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HOUSE BILL No. 1296



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

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

1 SECTION 1. IC 6-3-2-2, AS AMENDED BY P.L.172-2011,
2 SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2014]: Sec. 2. (a) With regard to corporations and
4 nonresident persons, "adjusted gross income derived from sources
5 within Indiana", for the purposes of this article, shall mean and include:
6 (1) income from real or tangible personal property located in this
7 state;
8 (2) income from doing business in this state;
9 (3) income from a trade or profession conducted in this state;
10 (4) compensation for labor or services rendered within this state;
11 and
12 (5) income from stocks, bonds, notes, bank deposits, patents,
13 copyrights, secret processes and formulas, good will, trademarks,
14 trade brands, franchises, and other intangible personal property to
15 the extent that the income is apportioned to Indiana under this
16 section or if the income is allocated to Indiana or considered to be
17 derived from sources within Indiana under this section.



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

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

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

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

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

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

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

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

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- 1 (3) For all taxable years beginning after December 31, 2008, and
 2 before January 1, 2010, 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 eight (8); and
 6 (B) denominator of the fraction is ten (10).
- 7 (4) For all taxable years beginning after December 31, 2009, and
 8 before January 1, 2011, a fraction. The:
 9 (A) numerator of the fraction is the property factor plus the
 10 payroll factor plus the product of the sales factor multiplied by
 11 eighteen (18); and
 12 (B) denominator of the fraction is twenty (20).
- 13 (5) For all taxable years beginning after December 31, 2010, the
 14 sales factor.
- 15 (c) The property factor is a fraction, the numerator of which is the
 16 average value of the taxpayer's real and tangible personal property
 17 owned or rented and used in this state during the taxable year and the
 18 denominator of which is the average value of all the taxpayer's real and
 19 tangible personal property owned or rented and used during the taxable
 20 year. However, with respect to a foreign corporation, the denominator
 21 does not include the average value of real or tangible personal property
 22 owned or rented and used in a place that is outside the United States.
 23 Property owned by the taxpayer is valued at its original cost. Property
 24 rented by the taxpayer is valued at eight (8) times the net annual rental
 25 rate. Net annual rental rate is the annual rental rate paid by the taxpayer
 26 less any annual rental rate received by the taxpayer from subrentals.
 27 The average of property shall be determined by averaging the values at
 28 the beginning and ending of the taxable year, but the department may
 29 require the averaging of monthly values during the taxable year if
 30 reasonably required to reflect properly the average value of the
 31 taxpayer's property.
- 32 (d) The payroll factor is a fraction, the numerator of which is the
 33 total amount paid in this state during the taxable year by the taxpayer
 34 for compensation, and the denominator of which is the total
 35 compensation paid everywhere during the taxable year. However, with
 36 respect to a foreign corporation, the denominator does not include
 37 compensation paid in a place that is outside the United States.
 38 Compensation is paid in this state if:
 39 (1) the individual's service is performed entirely within the state;
 40 (2) the individual's service is performed both within and without
 41 this state, but the service performed without this state is incidental
 42 to the individual's service within this state; or

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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. Regardless of the f.o.b. point
19 or other conditions of the sale, sales of tangible personal property are
20 in this state if:

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

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

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

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

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

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

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

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

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

42 (h)(1) Net rents and royalties from real property located in this state

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- 1 are allocable to this state.
- 2 (2) Net rents and royalties from tangible personal property are
3 allocated to this state:
- 4 (i) if and to the extent that the property is utilized in this state; or
5 (ii) in their entirety if the taxpayer's commercial domicile is in this
6 state and the taxpayer is not organized under the laws of or
7 taxable in the state in which the property is utilized.
- 8 (3) The extent of utilization of tangible personal property in a state
9 is determined by multiplying the rents and royalties by a fraction, the
10 numerator of which is the number of days of physical location of the
11 property in the state during the rental or royalty period in the taxable
12 year, and the denominator of which is the number of days of physical
13 location of the property everywhere during all rental or royalty periods
14 in the taxable year. If the physical location of the property during the
15 rental or royalty period is unknown or unascertainable by the taxpayer,
16 tangible personal property is utilized in the state in which the property
17 was located at the time the rental or royalty payer obtained possession.
- 18 (i)(1) Capital gains and losses from sales of real property located in
19 this state are allocable to this state.
- 20 (2) Capital gains and losses from sales of tangible personal property
21 are allocable to this state if:
- 22 (i) the property had a situs in this state at the time of the sale; or
23 (ii) the taxpayer's commercial domicile is in this state and the
24 taxpayer is not taxable in the state in which the property had a
25 situs.
- 26 (3) Capital gains and losses from sales of intangible personal
27 property are allocable to this state if the taxpayer's commercial
28 domicile is in this state.
- 29 (j) Interest and dividends are allocable to this state if the taxpayer's
30 commercial domicile is in this state.
- 31 (k)(1) Patent and copyright royalties are allocable to this state:
- 32 (i) if and to the extent that the patent or copyright is utilized by
33 the taxpayer in this state; or
34 (ii) if and to the extent that the patent or copyright is utilized by
35 the taxpayer in a state in which the taxpayer is not taxable and the
36 taxpayer's commercial domicile is in this state.
- 37 (2) A patent is utilized in a state to the extent that it is employed
38 in production, fabrication, manufacturing, or other processing in
39 the state or to the extent that a patented product is produced in the
40 state. If the basis of receipts from patent royalties does not permit
41 allocation to states or if the accounting procedures do not reflect
42 states of utilization, the patent is utilized in the state in which the

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1 taxpayer's commercial domicile is located.

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

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

13 (1) separate accounting;

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

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

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

22 (m) In the case of two (2) or more organizations, trades, or
23 businesses owned or controlled directly or indirectly by the same
24 interests, the department shall distribute, apportion, or allocate the
25 income derived from sources within the state of Indiana between and
26 among those organizations, trades, or businesses in order to fairly
27 reflect and report the income derived from sources within the state of
28 Indiana by various taxpayers.

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

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

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

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

41 (1) a foreign corporation; or

42 (2) a corporation that is classified as a foreign operating

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1 corporation for the taxable year by section 2.4 of this chapter.
 2 (p) Notwithstanding subsections (l) and (m), the department may not
 3 require that income, deductions, and credits attributable to a taxpayer
 4 and another entity not described in subsection (o)(1) or (o)(2) be
 5 reported in a combined income tax return for any taxable year, unless
 6 the department is unable to fairly reflect the taxpayer's adjusted gross
 7 income for the taxable year through use of other powers granted to the
 8 department by subsections (l) and (m).

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

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

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

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

33 **(s) Sales of a broadcaster that arise from or relate to the**
 34 **broadcast or other distribution of film programming or radio**
 35 **programming by any means are in this state if the commercial**
 36 **domicile of the broadcaster's customer is in this state. Sales to**
 37 **which this subsection applies include income from advertising and**
 38 **licensing income from distributing film programming or radio**
 39 **programming. For purposes of this subsection, the following**
 40 **definitions apply:**

- 41 (1) "Broadcaster" means a taxpayer that is a television or
 42 radio station licensed by the Federal Communications

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Commission, a television or radio broadcast network, a cable program network, or a television distribution company. The term "broadcaster" does not include a cable service provider or a direct broadcast satellite system.

(2) "Commercial domicile" has the meaning set forth in IC 6-3-1-22.

(3) "Customer" means a person, corporation, partnership, limited liability company, or other entity, such as an advertiser or licensee, that has a direct connection or contractual relationship with the broadcaster under which revenue is derived by the broadcaster.

(4) "Film programming" means one (1) or more performances, events, or productions (or segments of performances, events, or productions) intended to be distributed for visual and auditory perception, including but not limited to news, entertainment, sporting events, plays, stories, or other literary, commercial, educational, or artistic works.

(5) "Radio programming" means one (1) or more performances, events, or productions (or segments of performances, events, or productions) intended to be distributed for auditory perception, including but not limited to news, entertainment, sporting events, plays, stories, or other literary, commercial, educational, or artistic works.

SECTION 2. [EFFECTIVE JANUARY 1, 2014] (a) IC 6-3-2-2, as amended by this act, applies to taxable years beginning after December 31, 2013.

(b) This SECTION expires July 1, 2016.

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