

DEPARTMENT OF STATE REVENUE

Information Bulletin #104
Income Tax
November 2022
Effective Date: Upon Publication
(Replaces Bulletin #104, dated August 2007)

SUBJECT: Qualified Patents Income Exemption

REFERENCES: [IC 6-3-1-3.5](#); [IC 6-3-2-21.7](#)

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SUMMARY OF CHANGES

Aside from nonsubstantive, technical changes, this bulletin has been changed to remove references to dates and to add clarifying language from the statute.

INTRODUCTION

The purpose of this bulletin is to provide guidance concerning the qualified patents income exemption, which Indiana provides for income attributable to qualified patents. The exemption applies to utility or plant patents issued after Dec. 31, 2007, for an invention resulting from a "development process conducted in Indiana," for taxable years beginning after Dec. 31, 2007. It does not apply to design patents.

The total amount of exemption claimed by a taxpayer in a taxable year may not exceed \$5,000,000. The exemption may not be claimed for more than 10 years. For the first 5 years, 50% of the amount of income received from the patents is exempt, and the percentage declines by 10% each year starting in the sixth year that the exemption is claimed. No exemption for the particular qualified patent is available after the eleventh taxable year in which the exemption is claimed for the qualified patent.

DEFINITIONS

"Invention" means an invention or discovery. 35 U.S.C. 100(a).

"Utility patent" means a patent issued for an invention or improvement of a useful process, machine or composition of matter. 35 U.S.C. 101.

"Plant patent" means a patent issued for an invention and asexual reproduction of any distinct new variety of plant, other than a tuber propagated plant or a plant found in an uncultivated state. 35 U.S.C. 161.

"Design patent" means a patent issued for any new, original and ornamental design for an article of manufacture. 35 U.S.C. 171.

"Taxpayer" means an individual or corporation with less than 500 employees or a nonprofit organization, and is domiciled in Indiana.

"Income" means:

- licensing fees or other income received for the use of a patent,
- royalties received for the infringement of a patent,
- receipts from the sale of a qualified patent, or
- income from the taxpayer's own use of a patent to produce the claimed invention, as long as:
 - the income does not exceed the fair market value of the licensing fees or other income that would be received by allowing use of the taxpayer's patent by someone other than the taxpayer, and
 - the fair market value is determined in each taxable year in which the taxpayer claims an exemption.

CLAIMING THE EXEMPTION

The taxpayer is required to claim the exemption on the qualified taxpayer's Indiana state tax return, and shall submit all information that the department deems necessary for the determination of the exemption.

If you have any questions concerning this bulletin, please contact the Tax Policy Division at taxpolicy@dor.in.gov.

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Commissioner

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