TITLE 45 DEPARTMENT OF STATE REVENUE

ARTICLE 1. GROSS INCOME TAX

Rule 1. General Provisions

45 IAC 1-1-1 Person or company defined (Repealed)

Sec. 1. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999; errata, 22 IR 2006)*

45 IAC 1-1-2 Gross income tax division defined (Repealed)

Sec. 2. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999; errata, 22 IR 2006)*

45 IAC 1-1-3 Treasurer defined (Repealed)

Sec. 3. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999; errata, 22 IR 2006)*

45 IAC 1-1-4 Director defined (Repealed)

Sec. 4. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999; errata, 22 IR 2006)*

45 IAC 1-1-5 Tax year defined (Repealed)

Sec. 5. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999; errata, 22 IR 2006)*

45 IAC 1-1-6 Tax period defined (Repealed)

Sec. 6. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999; errata, 22 IR 2006)*

45 IAC 1-1-7 Taxpayer defined (Repealed)

Sec. 7. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999)*

45 IAC 1-1-8 Receipts defined (Repealed)

Sec. 8. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999)*

45 IAC 1-1-9 Receipt of gross income defined (Repealed)

Sec. 9. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999)*

45 IAC 1-1-10 Constructive receipts defined (Repealed)

Sec. 10. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999)*

45 IAC 1-1-11 Retail merchant defined (Repealed)

Sec. 11. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999)*

45 IAC 1-1-12 Retail merchant's certificate; effect (Repealed)

Sec. 12. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 1-1-13 Selling at retail defined (Repealed)

Sec. 13. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999)*

45 IAC 1-1-14 Selling at retail distinguished from retail sales (Repealed)

Sec. 14. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999)*

45 IAC 1-1-15 Service charges related to sale (Repealed)

Sec. 15. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999)*

45 IAC 1-1-16 Withholding agent defined (Repealed)

Sec. 16. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 1-1-17 Gross income; gross receipts; definitions (Repealed)

Sec. 17. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999)*

45 IAC 1-1-18 Payment of tax by buyer (Repealed)

Sec. 18. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999)*

45 IAC 1-1-19 Trade, business and commerce defined (Repealed)

Sec. 19. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999)*

45 IAC 1-1-20 Property defined (Repealed)

Sec. 20. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999)*

45 IAC 1-1-21 Capital assets defined (Repealed)

Sec. 21. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999)*

45 IAC 1-1-22 Taxation of income from real property or capital asset sales (Repealed)

Sec. 22. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999)*

45 IAC 1-1-23 Income from prizes, premiums, awards, or games of chance; deductions (Repealed)

Sec. 23. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999)*

45 IAC 1-1-24 Income from insurance proceeds (Repealed)

Sec. 24. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999)*

45 IAC 1-1-25 Income from judgments or settlements (Repealed)

Sec. 25. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999)*

45 IAC 1-1-26 Interest defined (Repealed)

Sec. 26. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999)*

45 IAC 1-1-27 Income from collection of cigarette, motor fuel, and sales taxes (Repealed)

Sec. 27. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-28 Rental income defined (Repealed)

Sec. 28. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-29 Distinction between lease and sale (Repealed)

Sec. 29. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-30 Royalties defined (Repealed)

Sec. 30. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-31 Dividends defined; taxation of dividends (Repealed)

Sec. 31. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-32 Income from transfer of stocks (Repealed)

Sec. 32. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-33 Discount defined; freight allowance (Repealed)

Sec. 33. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-34 Refunds defined; deductions (Repealed)

Sec. 34. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-35 Receipt related to bonds (Repealed)

Sec. 35. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-36 Property exchanges (Repealed)

Sec. 36. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-37 Trade-ins (Repealed)

Sec. 37. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-38 Exchange on stock split (Repealed)

Sec. 38. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-39 Involuntary conversions of property (Repealed)

Sec. 39. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-40 Condemnations (Repealed)

Sec. 40. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-41 Consolidation, merger or other corporate reorganization (Repealed)

Sec. 41. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-42 Transactions related to corporate reorganizations (Repealed)

Sec. 42. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-43 Liquidation or dissolution (Repealed)

Sec. 43. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-44 Liquidation of subsidiary into parent (Repealed)

Sec. 44. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-45 Notes; retail installment contracts; conditional sales contracts (Repealed)

Sec. 45. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-46 Withdrawal of deposits; interest (Repealed)

Sec. 46. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-47 Goods sold on consignment (Repealed)

Sec. 47. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-48 Franchise operations (Repealed)

Sec. 48. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-49 Business situs defined (Repealed)

Sec. 49. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-50 Out-of-state business of Indiana residents (Repealed)

Sec. 50. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-51 Intangibles; business situs; commercial domicile (Repealed)

Sec. 51. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-52 Deduction for bad debts (Repealed)

Sec. 52. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-53 Commissions between real estate brokers (Repealed)

Sec. 53. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-54 Receipts by agents (Repealed)

Sec. 54. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-55 Sale of collateral realty (Repealed)

Sec. 55. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-56 Gifts (Repealed)

Sec. 56. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-57 Electric cooperatives (Repealed)

Sec. 57. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-58 Contributions of capital; issue of stock (Repealed)

Sec. 58. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-59 Gross earnings; conditional sales contracts (Repealed)

Sec. 59. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-60 Gross earnings of banks, trust companies, and loan associations (Repealed)

Sec. 60. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 1-1-61 Gross earnings of brokers and dealers (Repealed)

Sec. 61. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-62 Gross earnings of investment companies (Repealed)

Sec. 62. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 1-1-63 Creditor leasing companies (Repealed)

Sec. 63. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-64 Life or health and hospitalization insurance companies (Repealed)

Sec. 64. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-65 Underwriting income of life or health and hospitalization insurers (Repealed)

Sec. 65. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-66 Investment income of life or health and hospitalization insurers (Repealed)

Sec. 66. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-67 Miscellaneous income of life or health and hospitalization insurers (Repealed)

Sec. 67. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-68 Example and explanation of life, health and hospitalization insurer's schedule (Repealed)

Sec. 68. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-69 Fire and casualty insurance companies (Repealed)

Sec. 69. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-70 Premium income of fire and casualty insurance companies (Repealed)

Sec. 70. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-71 Investment income of fire and casualty insurance companies (Repealed)

Sec. 71. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-72 Miscellaneous income of fire and casualty insurance companies (Repealed)

Sec. 72. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-73 Deduction of policy liability of fire and casualty insurance companies (Repealed)

Sec. 73. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-74 Farmers' mutual insurance companies; income and deductions (Repealed)

Sec. 74. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-75 Gross earnings of grain dealers (Repealed)

Sec. 75. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-76 Price controls on grain and soybeans (Repealed)

Sec. 76. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-77 Gross earnings of wholesale grocers (Repealed)

Sec. 77. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-78 Retail food establishment defined (Repealed)

Sec. 78. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-79 Gross earnings and deductions of retail food service establishments (Repealed)

Sec. 79. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-80 Soft-water companies (Repealed)

Sec. 80. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-81 Livestock dealers (Repealed)

Sec. 81. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-82 Burial organizations (Repealed)

Sec. 82. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-83 Levy of tax on residents (Repealed)

Sec. 83. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-84 Levy of tax on nonresidents (Repealed)

Sec. 84. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-85 Schedule of rates (Repealed)

Sec. 85. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 1-1-86 Wholesale sales rate; definitions (Repealed)

Sec. 86. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-87 Display advertising rate (Repealed)

Sec. 87. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-88 Retail sales rate (Repealed)

Sec. 88. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-89 Vending machine sales rate (Repealed)

Sec. 89. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-90 Laundry and dry cleaner rates (Repealed)

Sec. 90. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-91 Laundry and dry cleaner agent rates (Repealed)

Sec. 91. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-92 Self-service laundry rates (Repealed)

Sec. 92. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-93 Linen, towel and uniform service rates (Repealed)

Sec. 93. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-94 Utility rates (Repealed)

Sec. 94. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-95 Gross earnings tax rate (Repealed)

Sec. 95. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-96 Services rate (Repealed)

Sec. 96. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-97 Retail merchant service charges rate (Repealed)

Sec. 97. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-98 Dealer reimbursements rate (Repealed)

Sec. 98. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-99 Finance charge rate defined (Repealed)

Sec. 99. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-100 Contractor rate defined (Repealed)

Sec. 100. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-101 Contractors; alternative tax computation (Repealed)

Sec. 101. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-102 Contracts for materials, labor, and expenses (Repealed)

Sec. 102. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-103 Contracts for labor only (Repealed)

Sec. 103. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-104 Suppliers of materials to contractors (Repealed)

Sec. 104. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-105 Subcontracts for labor and materials (Repealed)

Sec. 105. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-106 Builder's supervising agent rate (Repealed)

Sec. 106. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-107 Capital assets defined; disposal and transfer of capital assets (Repealed)

Sec. 107. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-108 Retail sales defined; tax rate (Repealed)

Sec. 108. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-109 Coin-operated machines (Repealed)

Sec. 109. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-110 Real estate sales rate (Repealed)

Sec. 110. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-111 Corporate advertising gross receipts rate (Repealed)

Sec. 111. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-112 Other income (Repealed)

Sec. 112. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-113 Payment of tax on receipts from real property sales (Repealed)

Sec. 113. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-114 Exempt transfers of real estate (Repealed)

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45 IAC 1-1-115 Segregation of receipts taxable at different rates (Repealed)

Sec. 115. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-116 $1000 deduction (Repealed)

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45 IAC 1-1-117 Deduction for returnable container deposits (Repealed)

Sec. 117. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-118 Exemption for interstate commerce (Repealed)

Sec. 118. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-119 Interstate sale of goods to out-of-state buyer (Repealed)

Sec. 119. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-120 Interstate sale of goods to Indiana buyer (Repealed)

Sec. 120. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-121 Services in interstate commerce (Repealed)

Sec. 121. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-122 Interstate sale of Indiana real estate (Repealed)

Sec. 122. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-123 Interstate transportation (Repealed)

Sec. 123. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-124 Interstate communications (Repealed)

Sec. 124. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-125 Imported goods (Repealed)

Sec. 125. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-126 Rental of tangible personal property in Indiana (Repealed)

Sec. 126. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-127 Tax exempt government obligations (Repealed)

Sec. 127. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-128 Tax collection by agent (Repealed)

Sec. 128. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-129 Sales to United States government (Repealed)

Sec. 129. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-130 Exemption for life insurance proceeds (Repealed)

Sec. 130. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-131 Exemption for property damage insurance receipts (Repealed)

Sec. 131. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-132 Nonprofit organizations (Repealed)

Sec. 132. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-133 Purposes of exempt organizations (Repealed)

Sec. 133. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-134 Income of partially exempt organizations (Repealed)

Sec. 134. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-135 Nonexempt nonprofit organizations (Repealed)

Sec. 135. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-136 Sales to exempt organizations (Repealed)

Sec. 136. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-137 Returns of partially exempt organizations (Repealed)

Sec. 137. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-138 Annual report; exemption application (Repealed)

Sec. 138. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-139 Exempt athletic exhibitions (Repealed)

Sec. 139. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-140 Exemption for insurance companies (Repealed)

Sec. 140. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-141 Exemption for excise taxes (Repealed)

Sec. 141. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-142 Condemnation receipts (Repealed)

Sec. 142. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-143 Exchange of personal property; deduction of encumbrances (Repealed)

Sec. 143. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-144 Motor vehicle dealer exchanges (Repealed)

Sec. 144. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-145 Interstate truck transportation (Repealed)

Sec. 145. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-146 Unrelated business income of nonprofit organizations (Repealed)

Sec. 146. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-147 Real estate mortgages (Repealed)

Sec. 147. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-148 Mortgages intended to avoid taxes (Repealed)

Sec. 148. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-149 Public transportation corporations (Repealed)

Sec. 149. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-150 Taxation of state and subdivisions (Repealed)

Sec. 150. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-151 Governmental and proprietary functions (Repealed)

Sec. 151. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-152 Governmental interdepartmental receipts (Repealed)

Sec. 152. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-153 Sales to state and subdivisions (Repealed)

Sec. 153. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-154 Returns by governmental units (Repealed)

Sec. 154. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-155 Partnerships, joint ventures, and pools having corporate members (Repealed)

Sec. 155. *(Repealed by Department of State Revenue; filed May 13, 1993, 5:00 p.m.: 16 IR 2346)*

45 IAC 1-1-155.1 Partnership income (Repealed)

Sec. 155.1. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-156 Exemption of corporate member immaterial (Repealed)

Sec. 156. *(Repealed by Department of State Revenue; filed May 13, 1993, 5:00 p.m.: 16 IR 2346)*

45 IAC 1-1-157 Tiered partnerships, joint ventures or pools (Repealed)

Sec. 157. *(Repealed by Department of State Revenue; filed May 13, 1993, 5:00 p.m.: 16 IR 2346)*

45 IAC 1-1-158 Returns by partnerships, joint ventures, and pools (Repealed)

Sec. 158. *(Repealed by Department of State Revenue; filed May 13, 1993, 5:00 p.m.: 16 IR 2346)*

45 IAC 1-1-159 Exemption for distributions to members of partnerships, joint ventures, or pools (Repealed)

Sec. 159. *(Repealed by Department of State Revenue; filed May 13, 1993, 5:00 p.m.: 16 IR 2346)*

45 IAC 1-1-159.1 Distributive share of a corporate partner (Repealed)

Sec. 159.1. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-160 Returns by fiduciaries (Repealed)

Sec. 160. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-161 Proof of fiduciary status (Repealed)

Sec. 161. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-162 Business trusts as taxpayers (Repealed)

Sec. 162. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-163 Corporate consolidated returns (Repealed)

Sec. 163. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-164 Election to file consolidated return; permission to discontinue (Repealed)

Sec. 164. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-165 Filing member of affiliated group of corporation (Repealed)

Sec. 165. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-166 Tax year of affiliated group; intercompany receipts; exemption (Repealed)

Sec. 166. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-167 Intercompany receipts; double deduction prohibited (Repealed)

Sec. 167. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-168 Quarterly returns for affiliated group members (Repealed)

Sec. 168. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-169 Tax liability of members of affiliated group (Repealed)

Sec. 169. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-170 Consolidated returns for other taxes not required (Repealed)

Sec. 170. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-171 Quarterly gross income tax returns and payments (Repealed)

Sec. 171. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-172 Annual gross income tax returns; credit for quarterly payments (Repealed)

Sec. 172. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-173 Return forms (Repealed)

Sec. 173. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-174 Filing of reprints and reproductions of forms (Repealed)

Sec. 174. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 545)*

45 IAC 1-1-175 Extensions of time for filing annual return (Repealed)

Sec. 175. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 545)*

45 IAC 1-1-176 Segregation of receipts taxable at different rates (Repealed)

Sec. 176. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-177 Correction of returns (Repealed)

Sec. 177. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 545)*

45 IAC 1-1-178 Payment with returns (Repealed)

Sec. 178. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 545)*

45 IAC 1-1-179 Assessments when collections jeopardized (Repealed)

Sec. 179. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 545)*

45 IAC 1-1-180 Penalties and interest (Repealed)

Sec. 180. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 545)*

45 IAC 1-1-181 Examination of returns by department (Repealed)

Sec. 181. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 545)*

45 IAC 1-1-182 Overpayment; refunds; interest (Repealed)

Sec. 182. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 545)*

45 IAC 1-1-183 Notice and demand for payment of deficiencies and interest (Repealed)

Sec. 183. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 545)*

45 IAC 1-1-184 Penalty and interest for negligent failure to pay tax (Repealed)

Sec. 184. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 545)*

45 IAC 1-1-185 Penalty and interest for fraud (Repealed)

Sec. 185. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 545)*

45 IAC 1-1-186 Penalty and interest for failure to timely file or pay (Repealed)

Sec. 186. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 545)*

45 IAC 1-1-187 Penalty for failure to file; return by department (Repealed)

Sec. 187. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 545)*

45 IAC 1-1-188 Time limitation for deficiency assessments (Repealed)

Sec. 188. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 545)*

45 IAC 1-1-189 Sufficiency of filing to start limitations period (Repealed)

Sec. 189. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 545)*

45 IAC 1-1-190 Notice of proposed assessment; protest (Repealed)

Sec. 190. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 545)*

45 IAC 1-1-191 Procedure and hearing for protested proposed assessments (Repealed)

Sec. 191. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 545)*

45 IAC 1-1-192 Agreed extension of time for assessment (Repealed)

Sec. 192. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 545)*

45 IAC 1-1-193 Warrants for collection of taxes; levy (Repealed)

Sec. 193. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 545)*

45 IAC 1-1-194 Collection fee for sheriffs (Repealed)

Sec. 194. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 545)*

45 IAC 1-1-195 Failure to provide inventory or statement (Repealed)

Sec. 195. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 545)*

45 IAC 1-1-196 Civil suit for collection (Repealed)

Sec. 196. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 546)*

45 IAC 1-1-197 Injunction against delinquent taxpayer (Repealed)

Sec. 197. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 546)*

45 IAC 1-1-198 Receivership for collection (Repealed)

Sec. 198. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 546)*

45 IAC 1-1-199 Remedies; cumulative (Repealed)

Sec. 199. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 546)*

45 IAC 1-1-200 List of unsatisfied warrants (Repealed)

Sec. 200. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 546)*

45 IAC 1-1-201 Employment of collection attorneys (Repealed)

Sec. 201. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 546)*

45 IAC 1-1-202 Refund petition (Repealed)

Sec. 202. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 546)*

45 IAC 1-1-203 Time limitation on refund claims (Repealed)

Sec. 203. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 546)*

45 IAC 1-1-204 Content of refund claim (Repealed)

Sec. 204. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 546)*

45 IAC 1-1-205 Examination of refund claim; additional assessments (Repealed)

Sec. 205. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 546)*

45 IAC 1-1-206 Hearing on refund claim (Repealed)

Sec. 206. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 546)*

45 IAC 1-1-207 Civil suit for refund (Repealed)

Sec. 207. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 546)*

45 IAC 1-1-208 Interest on refunds (Repealed)

Sec. 208. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 546)*

45 IAC 1-1-209 Information returns (Repealed)

Sec. 209. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 546)*

45 IAC 1-1-210 Filing requirements for information returns (Repealed)

Sec. 210. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 546)*

45 IAC 1-1-211 Identification numbers on information returns (Repealed)

Sec. 211. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 546)*

45 IAC 1-1-212 Penalties for failure to file information returns (Repealed)

Sec. 212. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 546)*

45 IAC 1-1-213 Withholding of gross income tax (Repealed)

Sec. 213. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-214 Nonresident contractor defined (Repealed)

Sec. 214. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-215 Taxable services of nonresident contractor (Repealed)

Sec. 215. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-216 Withholding agent defined (Repealed)

Sec. 216. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-217 Returns and payments by withholding agents (Repealed)

Sec. 217. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-218 Penalties for violation of withholding requirements (Repealed)

Sec. 218. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-219 Withholding by governmental units (Repealed)

Sec. 219. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-220 Tax year (Repealed)

Sec. 220. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 546)*

45 IAC 1-1-221 Permitted accounting methods (Repealed)

Sec. 221. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 546)*

45 IAC 1-1-222 Limited confidentiality of taxpayer information (Repealed)

Sec. 222. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 546)*

45 IAC 1-1-223 Corporate dissolution and tax payment (Repealed)

Sec. 223. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-224 Taxpayer's duty to keep and disclose records (Repealed)

Sec. 224. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 546)*

45 IAC 1-1-225 False records prohibited (Repealed)

Sec. 225. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 546)*

45 IAC 1-1-226 Penalties for tax evasion (Repealed)

Sec. 226. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 546)*

45 IAC 1-1-227 Waiver of prosecution (Repealed)

Sec. 227. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 546)*

45 IAC 1-1-228 Rulemaking powers; distribution of rules and forms (Repealed)

Sec. 228. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 546)*

45 IAC 1-1-229 Investigations by department; cooperation (Repealed)

Sec. 229. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 1-1-230 Severability of statutes and rules (Repealed)

Sec. 230. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

45 IAC 1-1-231 Airport development zones (Repealed)

Sec. 231. *(Repealed by Department of State Revenue; filed Oct 16, 1998, 3:45 p.m.: 22 IR 719, eff Jan 1, 1999)*

ARTICLE 1.1. GROSS INCOME TAX

Rule 1. Definitions

45 IAC 1.1-1-1 Applicability
Authority: IC 6-8.1-3-3
Affected: IC 6-2.1

Sec. 1. In addition to the definitions in IC 6-2.1, the definitions in this rule apply throughout this article. *(Department of State Revenue; 45 IAC 1.1-1-1; filed Oct 16, 1998, 3:45 p.m.: 22 IR 691, eff Jan 1, 1999)*

45 IAC 1.1-1-2 "Agent" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-10; IC 6-2.1-1-11

Sec. 2. (a) "Agent" means a person or entity authorized by another to transact business on its behalf.

(b) A taxpayer will qualify as an agent if it meets both of the following requirements:

(1) The taxpayer must be under the control of another. An agency relationship is not established unless the taxpayer is under the control of another in transacting business on its behalf. The relationship must be intended by both parties and may be established by contract or implied from the conduct of the parties. The representation of one (1) party that it is the agent of another party without the manifestation of consent and control by the alleged principal is insufficient to establish an agency relationship.

(2) The taxpayer must not have any right, title, or interest in the money or property received from the transaction. The income must pass through, actually or substantially, to the principal or a third party, with the taxpayer being merely a conduit through which the funds pass between a third party and the principal.

(Department of State Revenue; 45 IAC 1.1-1-2; filed Oct 16, 1998, 3:45 p.m.: 22 IR 691, eff Jan 1, 1999)

45 IAC 1.1-1-3 "Business situs" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-2; IC 6-2.1-2-2

Sec. 3. (a) A "business situs" arises where possession and control of a property right have been localized in some business or investment activity away from the owner's domicile.

(b) A taxpayer may establish a business situs in ways, including, but not limited to, the following:

(1) Use, occupancy, or operation of an office, shop, construction site, store, warehouse, factory, agency route, or other place where the taxpayer's affairs are conducted.

(2) Performance of services.

(3) Maintenance of an inventory or stocks of goods for sale, distribution, or manufacture.

(4) Sale or distribution of merchandise from company-owned vehicles where title to the goods passes at the time of sale or distribution.

(5) Acceptance of orders without the right of approval or rejection in another state.

(6) Ownership, leasing, rental, or other business activities connected with income-producing property (real or personal).

(7) Ownership (in whole or part) of a partnership doing business in Indiana unless the ownership is that of a limited partner who does not participate in the control of the business.

(8) Other business or investment activities, other than de minimis, performed on behalf of the taxpayer by an employee of the taxpayer. These activities shall be considered together, not in isolation, in deciding if they are de minimis.

(Department of State Revenue; 45 IAC 1.1-1-3; filed Oct 16, 1998, 3:45 p.m.: 22 IR 691, eff Jan 1, 1999; errata filed Mar 5, 1999, 9:30 a.m.: 22 IR 2273)

45 IAC 1.1-1-4 "Capital asset" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-2; IC 6-2.1-2-1

Sec. 4. (a) Except as provided in subsection (b), "capital asset" includes all property, whether real, tangible, or intangible, held by a taxpayer.

(b) The term does not include the following:

(1) Stock in trade of a retail merchant held primarily for sale to a customer in the regular course of a trade or business.

(2) Inventory held as raw materials.

(3) Goods in the process of being finished.

(4) Finished goods held for sale or for use in the production of a product to be sold.

(c) Except as provided in subsection (d), if a taxpayer converts a noncapital asset to a capital asset, it remains a capital asset in the hands of that taxpayer.

(d) A noncapital asset that is converted to a capital asset but is:

(1) not depreciated;

(2) utilized by the taxpayer for less than a year;

(3) subsequently returned to inventory; and

(4) sold in the ordinary course of the taxpayer's business;

will not be considered a capital asset for purposes of 45 IAC 1.1-2-8. *(Department of State Revenue; 45 IAC 1.1-1-4; filed Oct 16, 1998, 3:45 p.m.: 22 IR 692, eff Jan 1, 1999)*

45 IAC 1.1-1-5 "Constructive receipt" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-10; IC 6-2.1-1-11

Sec. 5. (a) "Constructive receipt" means an item of gross income which is not actually received by a taxpayer but is:

(1) credited to the taxpayer;

(2) made available for the taxpayer's withdrawal;

(3) paid to another for the taxpayer's direct benefit; or

(4) income to which the taxpayer is entitled.

(b) The term includes, but is not limited to, the following:

(1) The partial or complete forgiveness of a debt.

(2) Payment of a taxpayer's obligations by a third party for the taxpayer's direct benefit. The assumption of an outstanding lien on equipment sold by the taxpayer is not a payment for the taxpayer's direct benefit.

(3) The sale, by a lender, of property pledged or assigned by the taxpayer as collateral for a loan.

(4) Amounts credited to a partner as its distributive share of partnership income.

(5) The amount of known liabilities discharged as a result of a sale or other disposition of property, and from which the taxpayer receives a direct benefit. For example, if a taxpayer sells a piece of equipment for five hundred thousand dollars ($500,000) and uses part of the proceeds to pay off a two hundred thousand dollar ($200,000) lien against the piece of equipment, the amount received by the taxpayer for gross income tax purposes is five hundred thousand dollars ($500,000). *(Department of State Revenue; 45 IAC 1.1-1-5; filed Oct 16, 1998, 3:45 p.m.: 22 IR 692, eff Jan 1, 1999)*

45 IAC 1.1-1-6 "Consumed" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-2-1

Sec. 6. (a) Except as provided in this subsection, "consumed" means the immediate dissipation of a property by combustion, use, or application. The term does not mean the immediate loss of tools, dies, equipment, rolling stock or its accessories, machinery, or furnishings due to obsolescence, discarding, disuse, depreciation, damage, wear, or breakage.

(b) As used in this section, "immediate dissipation" means the instantaneous loss of minute particles of a property so that the property disperses, separates into parts, and diminishes to the point of disappearing. The dissipation of the total property need not be accomplished immediately but within such time as is reasonably requisite. *(Department of State Revenue; 45 IAC 1.1-1-6; filed Oct 16, 1998, 3:45 p.m.: 22 IR 692, eff Jan 1, 1999)*

45 IAC 1.1-1-7 "Department" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1

Sec. 7. "Department" means the department of state revenue. *(Department of State Revenue; 45 IAC 1.1-1-7; filed Oct 16, 1998, 3:45 p.m.: 22 IR 692, eff Jan 1, 1999)*

45 IAC 1.1-1-8 "Discount" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-2

Sec. 8. (a) Except as provided in subsection (b), "discount" means the reduction in the purchase price of an item customarily granted by a seller and taken by a buyer in consideration of prompt payment of an invoice.

(b) The term does not include the following:

(1) A purchase which requires an additional activity or condition to be fulfilled before the reduction in purchase price will be granted.

(2) A patronage dividend.

(c) A discount may be allowed where expenses of the purchaser tied to the sale, such as freight charges or delivery charges, are paid by the seller to complete the sale. However, what is otherwise an expense of the seller cannot be changed to look like a discount to escape being included in gross income. *(Department of State Revenue; 45 IAC 1.1-1-8; filed Oct 16, 1998, 3:45 p.m.: 22 IR 692, eff Jan 1, 1999)*

45 IAC 1.1-1-9 "Dividend" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-2

Sec. 9. (a) "Dividend" means a distribution payable by a corporation or association out of its earnings, profits, or some other source not impairing capital. The term includes a patronage dividend paid in cash or stock by a cooperative association. The distribution must be made in proportion to a stockholder's share of outstanding stock or membership interest therein.

(b) The term does not include the return of insurance premiums which is a reduction of cost. The term also does not include a stock dividend which merely increases the number of shares outstanding but representing exactly the same property interest. *(Department of State Revenue; 45 IAC 1.1-1-9; filed Oct 16, 1998, 3:45 p.m.: 22 IR 693, eff Jan 1, 1999)*

45 IAC 1.1-1-10 "Gross income" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1; IC 6-2.1-4

Sec. 10. (a) Except as otherwise provided in this article, "gross income" means the entire amount of receipts received by a taxpayer, actually or constructively, without any deductions of any kind or nature except as specifically allowed under IC 6-2.1-4.

(b) Amounts included in gross income are:

(1) cash and checks;

(2) notes or other property of any value or kind;

(3) services of any value or kind; and

(4) anything else of value received by or credited to the taxpayer in lieu of cash.

(c) The term does not include any amounts specifically excluded by IC 6-2.1-1. *(Department of State Revenue; 45 IAC 1.1-1-10; filed Oct 16, 1998, 3:45 p.m.: 22 IR 693, eff Jan 1, 1999)*

45 IAC 1.1-1-11 "Gross income of a broker" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-8

Sec. 11. (a) "Gross income of a broker" means the commissions earned from brokerage transactions without any deductions of any kind or character.

(b) As used in this section, "broker" includes a securities broker and a commodity broker. However, it does not include a taxpayer who purchases produce or otherwise acquires the ownership of a stock of commodities carried and handled for sale in its normal trade or business. The essential function of a broker is making a bargain for contracting parties without taking possession, management, control, or title of the goods involved. A broker cannot make a contract in its own name, except under the following circumstances:

(1) The contract is made with the knowledge and consent of the broker's principal.

(2) The contract is justified by the usages of trade of the particular business involved.

Otherwise, to qualify as a brokerage transaction, the contract must be in the name of the principal.

(c) As used in this section, "brokerage transaction" means a group of activities whereby a taxpayer is paid a commission for bringing a buyer and seller together and completing a sale of property.

(d) A taxpayer acting as a broker for goods and, at the same time, as a retail merchant for the same or similar type of goods, will report its gross income under subsection (a) only to the extent that its income is received from acting as a broker. *(Department of State Revenue; 45 IAC 1.1-1-11; filed Oct 16, 1998, 3:45 p.m.: 22 IR 693, eff Jan 1, 1999)*

45 IAC 1.1-1-12 "Gross income of a drug wholesaler" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-4.5; IC 16-18-2-199

Sec. 12. (a) Except as provided in subsection (e), "gross income of a drug wholesaler" means the gross earnings that are derived from the sale of legend drugs.

(b) As used in subsection (a), "drug wholesaler" means a taxpayer who in the ordinary course of its business buys and sells legend drugs it has not manufactured to the following:

(1) Another person for the purpose of resale.

(2) A pharmacy, pharmacist, practitioner, hospital, or other health care provider. The sale of the legend drug must be for the lawful distribution, administration, or dispensation by the health care provider or the health care provider's agent or employee.

(c) As used in subsection (a), "gross earnings" means gross receipts less the original purchase price paid, without any other deductions of any kind or character.

(d) As used in this section, "legend drug" shall have the same meaning that it does in IC 16-18-2-199.

(e) Gross income of a drug wholesaler which is not gross earnings derived from the sale of legend drugs shall be reported and taxed at the appropriate rate. *(Department of State Revenue; 45 IAC 1.1-1-12; filed Oct 16, 1998, 3:45 p.m.: 22 IR 693, eff Jan 1, 1999)*

45 IAC 1.1-1-13 "Gross income of a grain dealer" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-5; IC 6-2.1-1-7

Sec. 13. (a) Except as provided in subsections (d) and (e), "gross income of a grain dealer" means the gross earnings that are derived from the sale of the whole grain or soybeans.

(b) As used in this section, "gross earnings" means the difference between the selling price and the cost of the whole grain and soybeans plus the gross income from charges for service, storage, cleaning, and handling.

(c) As used in this section, "cost of the whole grain and soybeans" means the purchase price of the raw product plus transportation charges for freight in and freight out.

(d) A taxpayer acting as a grain dealer and, at the same time, as a wholesale or retail merchant of goods processed or manufactured from whole grain or soybeans will report its gross income under subsection (a) only to the extent that its income is received from acting as a grain dealer.

(e) If the United States government prescribes a purchase price and a sale price, "gross income of a grain dealer" means the specific margin fixed between the purchase price and the sale price, without any deduction of any kind or character. *(Department of State Revenue; 45 IAC 1.1-1-13; filed Oct 16, 1998, 3:45 p.m.: 22 IR 693, eff Jan 1, 1999; errata filed Mar 5, 1999, 9:30 a.m.: 22 IR 2273)*

45 IAC 1.1-1-14 "Gross income of an insurance carrier" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-2; IC 6-2.1-1-6; IC 6-2.1-3-8; IC 27-13

Sec. 14. (a) Except as otherwise provided in this section, "gross income of an insurance carrier" means the total amount of premiums, interest, dividends, commissions, rents, and other earnings with respect to conducting the business of an insurance

company. The term does not include the following:

(1) The amount of gross earnings which becomes or is used to maintain a policy reserve or other policy liability, to the extent that the insurance carrier is required to maintain the policy reserve or other policy liability by the department of insurance.

(2) Premium income derived from business conducted outside Indiana on which a domestic insurance carrier pays a premium tax of one percent (1%) or more. As used in this subdivision, "domestic insurance carrier" means an insurance company organized under the insurance laws of Indiana.

(3) Interest derived from securities issued by the federal government and from bonds of Indiana municipalities or taxing subdivisions.

(4) An amount retained by the taxpayer from premiums ceded under contracts for reinsurance when such amount is already included in gross income.

(b) As used in subsection (a), "premiums" means income which consists of gross premiums received from all sources. The term includes premiums ceded under contracts for reinsurance. The term does not include returned premiums, policy dividends, coupons (whether paid in cash or credited or used to pay renewal premiums), or reinsurance assumed premiums on which a tax reimbursement of one percent (1%) or more is made to the ceding company.

(c) As used in subsection (a), "other earnings with respect to conducting the business of an insurance company" includes the difference between the purchase price and the selling price of all property, tangible and intangible, representing the investment of funds. In determining investment earnings, expenses incurred with respect to a transaction are not deductible.

(d) As used in subsection (a), for a domestic farmers mutual insurance company, "amount of gross earnings which becomes or is used to maintain a policy reserve or other policy liability" means claims paid during the taxable period or that portion placed in reserve for payment of claims.

(e) As used in subsection (a), for a domestic carrier selling life insurance and annuities or accident and health insurance, "amount of gross earnings which becomes or is used to maintain a policy reserve or other policy liability" means the portion of underwriting income and investment income required to maintain reserves. The provisions of 45 IAC 1.1-6-11 apply to the calculation of reserves for a domestic carrier selling life insurance and annuities or accident and health insurance.

(f) As used in subsection (a), for a domestic casualty and fire insurance carrier, "amount of gross earnings which becomes or is used to maintain a policy reserve or other policy liability" means the percentage which is the ratio that the average of the policy reserves and other policy liabilities bears to the average of all admitted assets of the insurance carrier times the gross income determined for the taxable year. The reserves or other policy liabilities used in computing this ratio are limited to those reserves or liabilities designated to support policy losses.

(g) As used in subsection (f), "liabilities designated to support policy losses" include losses, loss adjustment expenses, unearned premiums, and drafts outstanding reported in the Liabilities, Surplus, and Other Funds section to the Annual Statement filed with the Indiana department of insurance. The term does not include liabilities, such as accounts payable or accrued and deferred expenses (such as contingent commissions, interest, taxes, and dividends).

(h) Gross income which is not earnings with respect to conducting the business of an insurance company will be reported and taxed at the appropriate rate. Examples of such income are:

(1) service income, such as fees from data processing services;

(2) receipts from the sale of tangible personal property, such as office furniture;

(3) receipts from vending machines; and

(4) receipts from the operation of an employee cafeteria.

Negative reserves are not deductible from gross income which is not earnings with respect to conducting the business of an insurance company. As used in this subsection, "negative reserves" means the amount by which policy reserves exceed total earnings with respect to conducting the business of an insurance company.

(i) Amounts received by an insurance carrier are exempt from the gross income tax if the company pays Indiana a premium tax of more than one percent (1%).

(j) For purposes of this section and 45 IAC 1.1-6-11, a health maintenance organization licensed under IC 27-13 shall be treated the same as an insurance carrier selling accident and health insurance on all income from providing prepaid health care services. *(Department of State Revenue; 45 IAC 1.1-1-14; filed Oct 16, 1998, 3:45 p.m.: 22 IR 694, eff Jan 1, 1999)*

45 IAC 1.1-1-15 "Gross income of a livestock dealer" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-3

Sec. 15. (a) "Gross income of a livestock dealer" means the gross earnings derived from the resale of livestock or from the sale of products resulting from the slaughtering and processing of livestock.

(b) As used in this section, "livestock dealer" means a taxpayer engaged in the business of purchasing live cattle, sheep, or swine for immediate resale or for slaughtering and processing such livestock for resale.

(c) As used in this section, "gross earnings" means the difference between the selling price and the purchase price of the livestock, without any other deduction of any kind or character.

(d) Gross income which is not derived from the resale of livestock or from the sale of products resulting from the slaughtering and processing of livestock shall be reported and taxed at the appropriate rate. *(Department of State Revenue; 45 IAC 1.1-1-15; filed Oct 16, 1998, 3:45 p.m.: 22 IR 695, eff Jan 1, 1999; errata filed Mar 5, 1999, 9:30 a.m.: 22 IR 2273)*

45 IAC 1.1-1-16 "Gross income of a qualified lessor" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-9

Sec. 16. (a) "Gross income of a qualified lessor" means the excess of the total rental payments received under a lease described in subsection (b) over the purchase price of the property leased prorated on an annual basis.

(b) As used in this section, "qualified lessor" means a taxpayer who:

(1) purchases tangible personal property solely for the purpose of leasing it to others;

(2) has no other purpose of ownership in the property; and

(3) leases the property to another for a term of at least five (5) years requiring the lessee to make rental payments equal to the cost of the property plus finance charges.

However, a taxpayer who acquires a lease agreement described in this subsection or the payments required under such lease, in the ordinary course of its regularly conducted business, is also a qualified lessor.

(c) "Qualified lessor" does not include the following taxpayers:

(1) A manufacturer of the property covered by a lease agreement described in subsection (b).

(2) A taxpayer engaged in the business of selling, as a distributor at wholesale or retail or otherwise, the property covered by a lease agreement described in subsection (b).

(3) A taxpayer who directly or indirectly controls, is controlled by, or is under common control with, a taxpayer described in subdivision (1) or (2).

As used in this subsection, "control" means the possession, directly or indirectly, of the power to influence or cause the influence of the management and policies of another entity, either through the ownership of voting securities, by contract, or otherwise.

(d) A taxpayer will report its gross income under subsection (a) only to the extent that its income is received from acting as a qualified lessor. *(Department of State Revenue; 45 IAC 1.1-1-16; filed Oct 16, 1998, 3:45 p.m.: 22 IR 695, eff Jan 1, 1999)*

45 IAC 1.1-1-17 "Gross income of a securities dealer" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-8

Sec. 17. (a) "Gross income of a securities dealer" means the gross earnings from sales of securities carried in the dealer's own inventory.

(b) As used in subsection (a), "gross earnings" means the difference between the purchase price of the securities and their selling price without any deductions of any kind or character.

(c) As used in subsection (a), "securities dealer" includes a dealer in commercial paper.

(d) A taxpayer acting as a securities dealer and, at the same time, in another capacity will report its gross income under subsection (a) only to the extent that its income is received from acting as a securities dealer. *(Department of State Revenue; 45 IAC 1.1-1-17; filed Oct 16, 1998, 3:45 p.m.: 22 IR 695, eff Jan 1, 1999)*

45 IAC 1.1-1-18 "Gross income of a wholesale grocer" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-4

Sec. 18. (a) Except as provided in subsection (e), "gross income of a wholesale grocer" means the gross earnings from the sale of groceries, tobacco products, or expendable household supplies to retail food establishments.

(b) As used in this section, "gross earnings" means gross receipts less the cost of the groceries, tobacco products, and expendable household supplies, without any other deduction of any kind or character.

(c) As used in this section, "cost of the groceries, tobacco products, and expendable household supplies" includes the following items only:

(1) The original purchase price.

(2) Freight in transportation expenses.

(3) Any other expenses reasonably necessary and directly related to the preparation of the groceries, tobacco products, and expendable household supplies for resale to retail food establishments.

(d) As used in this section, "expendable household supplies" means tangible personal property substantially related to or common to the upkeep or maintenance of a household that is consumed as it is used.

(e) As used in this section, "retail food establishment" means a business primarily engaged in the sale of food or food products to the public. The term includes the following:

(1) A grocery.

(2) A delicatessen.

(3) A restaurant.

(4) A lunch counter.

(5) A coffee shop.

(6) A retail food facility on the premises of a business not primarily engaged in the sale of food or food products to the public.

(f) A taxpayer will report its gross income under subsection (a) only to the extent that its income is received from acting as a wholesale grocer. *(Department of State Revenue; 45 IAC 1.1-1-18; filed Oct 16, 1998, 3:45 p.m.: 22 IR 696, eff Jan 1, 1999; errata filed Mar 5, 1999, 9:30 a.m.: 22 IR 2273)*

45 IAC 1.1-1-19 "Retail merchant" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-12

Sec. 19. (a) "Retail merchant" means a taxpayer who is regularly and occupationally engaged in the business of purchasing and reselling or renting tangible personal property.

(b) The possession of a retail merchant certificate is not conclusive evidence that a taxpayer is or is not a retail merchant. *(Department of State Revenue; 45 IAC 1.1-1-19; filed Oct 16, 1998, 3:45 p.m.: 22 IR 696, eff Jan 1, 1999)*

45 IAC 1.1-1-20 "Retail sale" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-2-1

Sec. 20. (a) "Retail sale" means a transaction, other than a wholesale sale, in which the ownership of tangible personal property is transferred for consideration in the ordinary course of the seller's regularly conducted business.

(b) To qualify as a retail sale under subsection (a), the property must have been previously acquired by the seller for the purpose of reselling it.

(c) As used in this section, the term has the same meaning as "selling at retail". *(Department of State Revenue; 45 IAC 1.1-1-20; filed Oct 16, 1998, 3:45 p.m.: 22 IR 696, eff Jan 1, 1999)*

45 IAC 1.1-1-21 "Royalty" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-2

Sec. 21. (a) "Royalty" means a payment received by the grantor of a patent, copyright, or similar right and payable proportionately to the use made of the right by the grantee.

(b) The term includes the share of the product or profit from a mining or oil operation paid to the owner of the property. The

term does not include the payment for the use of real estate in a mineral lease that is rent. *(Department of State Revenue; 45 IAC 1.1-1-21; filed Oct 16, 1998, 3:45 p.m.: 22 IR 696, eff Jan 1, 1999)*

45 IAC 1.1-1-22 "Taxpayer" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-16; IC 6-2.1-3-24; IC 6-2.1-3-24.5; IC 6-2.1-6; IC 23-5-1-2

Sec. 22. (a) "Taxpayer" includes the following:
(1) A regular C corporation.
(2) A regular C corporation that is a partner of a partnership.
(3) A not-for-profit organization on nonexempt income.
(4) A business trust as defined in IC 23-5-1-2.
(5) Indiana or a political subdivision of Indiana to the extent engaged in private or proprietary activities.
(6) A political organization as defined in Section 527 of the Internal Revenue Code.
(7) A publicly traded partnership that is treated as a corporation under Section 7704 of the Internal Revenue Code.
(8) A receiver, trustee, or conservator of a taxpayer subject to IC 6-2.1.
(9) An individual or entity required to withhold gross income taxes pursuant to IC 6-2.1-6.
(10) A fund, account, or trust treated as a corporation under Section 468B of the Internal Revenue Code or its accompanying regulations.
(11) A limited liability company, except when it is composed of a single member and is disregarded as an entity for federal income tax purposes.
(b) Except as provided in subsection (a), the term does not include the following:
(1) An individual.
(2) A partnership.
(3) A trust.
(4) An estate.
(5) An S corporation exempt under IC 6-2.1-3-24.
(6) A small business corporation as defined in IC 6-2.1-3-24.5.
(7) An organization wholly exempt from the gross income tax under IC 6-2.1-3.

(Department of State Revenue; 45 IAC 1.1-1-22; filed Oct 16, 1998, 3:45 p.m.: 22 IR 696, eff Jan 1, 1999; errata filed Mar 5, 1999, 9:30 a.m.: 22 IR 2273)

45 IAC 1.1-1-23 "Wholesale sale" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-2-1; IC 6-2.1-2-1.2

Sec. 23. (a) "Wholesale sale" means the sale of tangible personal property (other than capital assets of the seller) under the following circumstances:
(1) For resale without any change in its form.
(2) To be consumed in the direct production of other tangible personal property by a business in:
    (A) manufacturing;
    (B) processing;
    (C) refining;
    (D) repairing;
    (E) mining;
    (F) agriculture; or
    (G) horticulture.
(3) To be incorporated as a necessary part of other tangible personal property produced by a business in:
    (A) manufacturing;
    (B) assembling;
    (C) constructing;

(D) refining; or

(E) processing.

(4) To be consumed in professional use by doctors, hospitals, embalmers, funeral directors, and tonsorial parlors. In these circumstances, tangible personal property is limited to drugs, medical and dental preparations, and other similar materials.

(5) To be consumed in the business of industrial cleaning.

(6) To be consumed in the business of rendering public utility service.

(b) A sale under subsection (a)(3) will include the receipts from industrial processing or servicing, such as tire retreading and the enameling or plating of tangible personal property, if the property is owned and produced for sale by the business for whom the servicing or processing is performed.

(c) As used in this section, the term does not include a sale to a division, subdivision, agency, instrumentality, unit, or department of government. *(Department of State Revenue; 45 IAC 1.1-1-23; filed Oct 16, 1998, 3:45 p.m.: 22 IR 697, eff Jan 1, 1999)*

45 IAC 1.1-1-24 "Withholding agent" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-17; IC 6-2.1-6

Sec. 24. (a) "Withholding agent" means a person or entity required to withhold gross income taxes under IC 6-2.1-6.

(b) The term includes a person or entity making payments to a nonresident contractor. The term also includes a prime contractor making payments to nonresident subcontractors. The following contracts are examples of service work that would require withholding on payments to nonresident contractors subject to the gross income tax:

(1) A construction contract of any kind.

(2) A contract for the performance of or participation in athletic events and exhibitions, including auto races.

(3) A contract for entertainment, including single entertainment events.

(4) A contract for the furnishing and installation of tangible personal property.

(5) A contract for leasing tangible personal property.

(c) As used in this section, "nonresident contractor" does not include a foreign corporation qualified to do business in Indiana. *(Department of State Revenue; 45 IAC 1.1-1-24; filed Oct 16, 1998, 3:45 p.m.: 22 IR 697, eff Jan 1, 1999)*

Rule 2. Imposition

45 IAC 1.1-2-1 Indiana source income

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-2-2; IC 6-2.1-2-2.5

Sec. 1. (a) Except as otherwise provided in this article or IC 6-2.1, the gross income tax is imposed upon the receipt of:

(1) the entire gross income of a taxpayer who is a resident or a domiciliary of Indiana; and

(2) the gross income derived from an activity, a business, or another source within Indiana by a taxpayer who is not a resident or a domiciliary of Indiana.

(b) A taxpayer described in subsection (a)(2) who has contracted with a commercial printer for printing shall not have taxable gross income from:

(1) the ownership or leasing by that entity of tangible or intangible property located at the Indiana premises of the commercial printer;

(2) the sale by that entity of property of any kind produced at and shipped or distributed from the Indiana premises of the commercial printer;

(3) the activities of any kind performed by or on behalf of that entity at the Indiana premises of the commercial printer; and

(4) the activities of any kind performed by the commercial printer in Indiana for or on behalf of that entity;

if the taxpayer does not operate a fixed place of business in Indiana. In no event shall the taxpayer be considered to have a fixed place of business in Indiana at either the commercial printer's premises or at any place where the commercial printer performs services on behalf of the taxpayer. *(Department of State Revenue; 45 IAC 1.1-2-1; filed Oct 16, 1998, 3:45 p.m.: 22 IR 697, eff Jan 1, 1999)*

45 IAC 1.1-2-2 Low rate of tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-2-4; IC 6-2.1-2-5

Sec. 2. (a) Except as provided in subsection (b), taxable gross income from the following business transactions is subject to a tax rate of three-tenths of one percent (0.3%):

(1) Retail and wholesale sales.

(2) Display advertising, except for receipts from the sale or rental of property or from the rendering of professional services in connection with such advertising.

(3) Dry cleaning and laundering service, except for coin operated laundry and dry cleaning equipment.

(4) The rental of water softening and conditioning equipment, including exchanging tanks in the ordinary course of business, but excluding plumbing work incidental to the installation of water softening and conditioning tanks.

(5) The rental of rooms, lodgings, booths, display spaces, banquet facilities, and other such accommodations for periods of less than thirty (30) days at a location where such accommodations are regularly furnished for a consideration.

(6) The business of commercial printing that results in printed materials, excluding the business of photocopying.

(b) The low rate of tax provided by subsection (a) is not available to a taxpayer that fails to separate such gross income from all other income in the taxpayer's records and on the taxpayer's return. Also, the low rate of tax does not apply to gross income from a wholesale sale described in IC 6-2.1-2-5. *(Department of State Revenue; 45 IAC 1.1-2-2; filed Oct 16, 1998, 3:45 p.m.: 22 IR 698, eff Jan 1, 1999)*

45 IAC 1.1-2-3 "Display advertising" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-2-4

Sec. 3. (a) As used in section 2 of this rule, "display advertising" includes:

(1) outdoor billboards;

(2) outdoor posters;

(3) outdoor painted displays;

(4) print media advertising; and

(5) the sale of time by a radio station, a television station, and a cable television operator.

(b) The term does not include the following:

(1) The rendering of professional services in connection with such advertising.

(2) The sale or rental of tangible property that will be used in display advertising. Examples of such tangible property include the following:

(A) Real estate.

(B) Painted signs.

(C) Electric signs.

(D) Neon signs.

(E) Novelties.

(F) Handbills.

(G) Cards.

(Department of State Revenue; 45 IAC 1.1-2-3; filed Oct 16, 1998, 3:45 p.m.: 22 IR 698, eff Jan 1, 1999)

45 IAC 1.1-2-4 High rate of tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1; IC 6-2.1-2

Sec. 4. (a) Taxable gross income from the following business transactions is subject to a tax rate of one and two-tenths percent (1.2%):

(1) Producing, transmitting, furnishing, wholesaling, or retailing:

(A) electrical energy; or

(B) artificial gas, natural gas, or a mixture of the two (2) gases.

(2) Operating:

(A) a steam or electric railway, street car line, motor vehicle, steam or motorboat, or any other vehicle for the transportation of freight or passengers;

(B) a pipeline for the transportation of any commodity;

(C) a telephone or telegraph line;

(D) a water or sewerage system; or

(E) any other utility not specifically described in this subdivision.

(3) Activities described in IC 6-2.1-1-3 through IC 6-2.1-1-9.

(4) Any activity not specifically described in section 2 of this rule, including the following:

(A) The provision of services of any character.

(B) The sale of real estate.

(C) Rentals.

(D) The performance of contracts.

(E) The investment of capital.

(F) The sale of a capital asset.

(G) The provision of cable television.

(H) The extension of credit.

(b) If a taxpayer fails to separate, in its records and on its tax return, the gross income subject to the high rate from the gross income subject to the low rate, the taxpayer's entire gross income is subject to the rate imposed by subsection (a). *(Department of State Revenue; 45 IAC 1.1-2-4; filed Oct 16, 1998, 3:45 p.m.: 22 IR 698, eff Jan 1, 1999)*

45 IAC 1.1-2-5 Services

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-2-4; IC 6-2.1-3-3

Sec. 5. (a) Gross income derived from the provision of a service of any character within Indiana is subject to the gross income tax. This is true even when a service contract calls for the furnishing of tangible personal property in the performance of the contract. The property is used in Indiana in furtherance of the contract and is not exempt under IC 6-2.1-3-3. The property is intrinsically related to and inherently part of the services to be performed. In other words, the property is essential to and inseparable from the performance of the contract.

(b) Except as otherwise provided in this rule and IC 6-2.1-2-4, gross income derived from the provision of services of any character within Indiana is taxable at the high rate of tax.

(c) Charges for services rendered before delivery of a product such as charges for:

(1) preparation;

(2) fabrication;

(3) alteration;

(4) modification;

(5) finishing;

(6) completion; or

(7) delivery;

are considered a part of the sales price and taxed at the same rate as the gross income from the sale. As used in this subsection, “delivery” means the bringing of the property to a place agreed on by the parties to the contract. For example, delivery is complete when the property is brought to the job site under a construction contract.

(d) Gross income derived from the provision of a service within Indiana, with or without the incidental furnishing of tangible personal property, on goods belonging to another is subject to the gross income tax even though such property is moved in interstate commerce before or after the performance of the service.

(e) When a contract provides for the provision of services in a state besides Indiana, gross income derived from the provision of services within Indiana will be determined by multiplying the gross income derived from the contract by the ratio of Indiana activities to total activities provided under the contract. The activities used will be only those related to the services performed and reasonably calculated to effectuate an equitable allocation and apportionment of the taxpayer's gross income under the contract.

However, if the percentage of Indiana activities to total activities under the contract is less than five percent (5%), then the entire proceeds of the contract received in that year are exempt from the gross income tax.

(f) The following are examples of services being performed within Indiana:

(1) The sale of advertising time or space by Indiana publishers and broadcasters, even though the buyer is a nonresident, and even though the publication is disseminated in interstate commerce.

(2) The sale of telecommunications, including telephone, telegraph, and noncable television, if the telecommunications originate or terminate in Indiana and are charged to an Indiana address, and the charges are not taxable under the laws of another state.

(3) The provision of cable television services in Indiana regardless of where the television transmissions originate or are received.

(4) The leasing of motion picture films and intangible telecast rights to exhibitors within Indiana.

(5) The operation of radio and television stations within Indiana, including the sale of advertising time to local and national sponsors and the broadcast of local or national programs.

(6) The leasing of tangible personal property delivered to a site in Indiana where the lessor is directly engaged in locating the property in Indiana, and the leasing of tangible personal property delivered to a site outside Indiana where the lessor is not directly engaged in locating the property outside Indiana. The department will look to the totality of the lessor's activities related to the lease formation and execution and the activities related to the purpose of the lease, the use and possession of the leased property, in determining whether the lessor is directly engaged in locating the property in or outside of Indiana. More than a minimal amount of these activities must be conducted in Indiana. For instance, the activity of delivering property to a common carrier in one (1) state for shipment to another state, in and of itself, will not cause the lessor to be directly engaged in locating the property in or outside of Indiana. Also, the manufacture or ownership of property leased to an Indiana lessee, in and of itself, will not cause the lessor to be directly involved in locating the property in Indiana.

(Department of State Revenue; 45 IAC 1.1-2-5; filed Oct 16, 1998, 3:45 p.m.: 22 IR 699, eff Jan 1, 1999; errata filed Mar 5, 1999, 9:30 a.m.: 22 IR 2273)

45 IAC 1.1-2-6 Vending machine sales

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-2

Sec. 6. (a) A sale of tangible personal property by use of a vending machine is a retail sale.

(b) The gross receipts from a vending machine sale are taxable at the lower rate without any deductions for any amounts paid to the location owner.

(c) Except as provided in subsection (b), all amounts received by a location owner in connection with a vending machine are rental receipts and therefore taxable at the higher rate. *(Department of State Revenue; 45 IAC 1.1-2-6; filed Oct 16, 1998, 3:45 p.m.: 22 IR 700, eff Jan 1, 1999)*

45 IAC 1.1-2-7 Nonvending machine sales

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-2-5

Sec. 7. (a) "Nonvending machine sale" means the sale of a service by use of a coin or card operated machine. The term includes the sale of any service by machine which does not include the dispensing of tangible personal property.

(b) The gross income from a nonvending machine sale and any services associated therewith is taxable at the higher rate. *(Department of State Revenue; 45 IAC 1.1-2-7; filed Oct 16, 1998, 3:45 p.m.: 22 IR 700, eff Jan 1, 1999)*

45 IAC 1.1-2-8 Sale of a capital asset

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-2-1; IC 6-2.1-2-5

Sec. 8. (a) The gross income from the sale of a capital asset is taxable at the high rate of tax.

(b) The following examples illustrate the taxation of a capital asset:

(1) A corporation sells a milling machine which costs seven thousand dollars ($7,000) in 1989 for two thousand dollars ($2,000). The book value of the machine at the time of sale was three thousand dollars ($3,000). The milling machine is a capital asset and the receipts of two thousand dollars ($2,000) from the sale are subject to the high rate of tax.

(2) The corporate assets of a retail merchant are sold. The assets include the following:

(A) Inventory.
(B) Office supplies.
(C) Trucks.
(D) Equipment.
(E) Good will.
(F) A building.
(G) Land.

The inventory is a noncapital asset and the receipts from the sale of inventory are subject to the low rate of tax. The remaining assets are capital assets and the receipts derived from the sale of these assets are subject to the high rate of tax.

(3) A retail merchant removes a noncapital asset from its stock in trade for the purpose of leasing it to a customer for a period of two (2) years. Because the property is converted from being held for sale to being leased for a period of two (2) years, it becomes a capital asset. At the termination of the lease, the asset is returned to the inventory of the taxpayer and sold. Because the asset remains a capital asset, the receipts from the sale are subject to the high rate of tax.

(4) A retail merchant removes a noncapital asset from its stock in trade for the purpose of briefly using it as a demonstrator. The asset is not depreciated, and it is subsequently returned to inventory and sold in the taxpayer's ordinary course of business. The asset does not become a capital asset for purposes of this section and the receipts from the sale of the asset are subject to the low rate of tax.

(5) A manufacturer of business machines sells and also leases such machines. A leased machine becomes a capital asset at the beginning of the lease. Because it is a capital asset, the receipts from the eventual sale of a leased machine by the manufacturer are subject to the high rate of tax.

(Department of State Revenue; 45 IAC 1.1-2-8; filed Oct 16, 1998, 3:45 p.m.: 22 IR 700, eff Jan 1, 1999)

45 IAC 1.1-2-9 Dry cleaning and laundering

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-2-4

Sec. 9. (a) Except as provided in subsection (b), gross income derived from the business of dry cleaning and laundering is subject to the low rate of tax.

(b) Gross income derived from coin operated laundry and dry cleaning equipment is subject to the high rate of tax.

(c) As used in this section, “the business of dry cleaning and laundering” means the laundering or dry cleaning of wearing apparel and household goods such as linen, towels, and upholstery.

(d) The business of dry cleaning and laundering does not include the following:

(1) The mending, repairing, or pressing of wearing apparel and household goods when such services are performed entirely apart from dry cleaning and laundering.

(2) A self-service laundry, a launderette, or similar business unless the actual cleaning services are done by an attendant of the owner.

(3) The furnishing of clean linen, towels, or uniforms unless the taxpayer providing such service also performs the dry cleaning and laundering of the property rented.

(e) A taxpayer may be in the business of dry cleaning and laundering at an established location even though the product is sent elsewhere for the dry cleaning or laundering. However, a taxpayer who acts as an agent of a laundry or dry cleaner is not in the business of dry cleaning and laundering. *(Department of State Revenue; 45 IAC 1.1-2-9; filed Oct 16, 1998, 3:45 p.m.: 22 IR 700, eff Jan 1, 1999)*

45 IAC 1.1-2-10 Rental income

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-2-4; IC 6-2.1-2-5

Sec. 10. (a) Except as provided in subsection (b), rental income derived from leasing real or personal property is taxable as a service under section 5 of this rule.

(b) If the leasing agreement is a financing device for a sale of tangible personal property that is normally sold in the regular course of the taxpayer's retail business, the receipts from the contract are taxable as a retail sale.

(c) The department will consider many factors in determining the intent of the parties, including the following:

(1) Whether the lease payments are to be applied to an equity to be acquired by the lessee.

(2) Whether the lessee will acquire title to the goods upon the lessor's receipt of a stated amount of payments under the contract.

(3) Whether the total lease payments for a relatively short period of use make up an inordinately large proportion of the total payments needed for the lessee to secure title.

(4) Whether the lease payments exceed the current fair rental value of like goods.

(5) Whether the lease contains an option to buy at a price nominal in comparison to the value of the property when the option may be exercised.

(6) Whether a part of the lease payments is designated or recognizable as interest or its equivalent.

(d) If a lease is not a financing device but contains an option to buy, payments received by the lessor until the exercise of the option are taxable as a service. *(Department of State Revenue; 45 IAC 1.1-2-10; filed Oct 16, 1998, 3:45 p.m.: 22 IR 701, eff Jan 1, 1999; errata filed Mar 5, 1999, 9:30 a.m.: 22 IR 2273)*

45 IAC 1.1-2-11 Advertising agency

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-2-5

Sec. 11. (a) The gross income of an advertising agency is subject to the gross income tax at the higher rate except for any income received from the actual sale of tangible personal property.

(b) As used in this section, “gross income” includes reimbursements of costs or expenses under a cost plus a fixed fee or percent of cost contract in which an advertising agency is acting as an independent contractor with respect to any client, including an advertiser or the news media. The term also includes amounts actually or constructively received by an agency by crediting its account or otherwise reducing its liabilities. Income received in an agency capacity is subject to 45 IAC 1.1-6-10. *(Department of State Revenue; 45 IAC 1.1-2-11; filed Oct 16, 1998, 3:45 p.m.: 22 IR 701, eff Jan 1, 1999)*

45 IAC 1.1-2-12 Construction contractors

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-2-5; IC 6-2.1-6-1

Sec. 12. (a) As used in this section, “construction contractor” means a taxpayer obligated under the terms of a contract to furnish the necessary labor or materials, or both, to construct, alter, repair, move, erect, install, or demolish, including excavation and site development:

(1) a highway;

(2) a road;

(3) a railroad;

(4) a building; or

(5) any type of fixed structure, or any part thereof.

The term applies to a general contractor, a prime contractor, and a subcontractor. The term does not apply to a taxpayer who contracts to provide tangible personal property only, even though the contract requires the taxpayer to provide materials and labor to create the property.

(b) All construction contractors involved in the same project are taxable on the gross income each receives from the performance of a construction contract in Indiana without any deductions for any amounts paid other construction contractors. A nonresident construction contractor is taxable on the gross income from the performance of a construction contract in Indiana even though all work is subcontracted and the nonresident contractor has no other contact with Indiana.

(c) Generally, the gross income derived from the portion of the contract price representing the taxpayer's services is taxable at the high rate of tax. The gross income derived from the portion of the contract price representing materials is taxable at the low

rate of tax.

(d) If a construction contractor has a subcontractor, the breakdown of labor and materials provided by the subcontractor must be reported on the contractor's books and records or the total receipts applicable to the subcontracted portion of the contract will be subject to the high rate of tax.

(e) If the construction contractor prefabricates or manufactures tangible personal property prior to delivery to a job site, the cost of the tangible personal property includes the labor to produce the property and the cost to deliver the property to the job site.

(f) Under a cost plus contract, the actual material cost will be subject to the low rate of tax. The labor, overhead, and fixed fee will be subject to the high rate of tax.

(g) If a construction contractor is unable to segregate the portion of the contract price representing the taxpayer's services from the portion of the contract price representing materials on its books and records, an alternative method approved by the department may be used. This method shall be used only for a lump sum or fixed price contract where the contract terms do not segregate a price between service and tangible personal property. *(Department of State Revenue; 45 IAC 1.1-2-12; filed Oct 16, 1998, 3:45 p.m.: 22 IR 701, eff Jan 1, 1999)*

45 IAC 1.1-2-13 Distributive share of a corporate partner

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-11; IC 6-2.1-2-5; IC 6-3-2-2

Sec. 13. (a) As used in this section, “partner's distributive share” means the amount determined under Section 704 of the Internal Revenue Code and its prescribed regulations before any modifications required by Indiana tax statutes.

(b) An amount credited to a corporate partner as its distributive share of partnership income, which is derived from sources within Indiana is subject to the gross income tax. An amount previously subjected to the gross income tax because it was included in the partner’s distributive share but not actually distributed is not subject to the gross income tax again when it is actually distributed.

(c) For purposes of this subsection, all income of the partnership shall be considered business income. If a partnership does business in a state besides Indiana, a partner's distributive share of partnership income which is derived from sources within Indiana, for gross income tax purposes, shall be determined by multiplying the partner's distributive share by a fraction. The numerator of the fraction shall be the sum of:

(1) the property factor;
(2) the payroll factor; and
(3) the sales factor;

of the partnership. The denominator of the fraction shall be determined by the number of factors used. The property factor shall be determined under IC 6-3-2-2(c). The payroll factor shall be determined under IC 6-3-2-2(d). The sales factor shall be determined under IC 6-3-2-2(e) and IC 6-3-2-2(f).

(d) The amount credited to a corporate partner as its distributive share of partnership income which is derived from sources within Indiana is taxable at the high rate. *(Department of State Revenue; 45 IAC 1.1-2-13; filed Oct 16, 1998, 3:45 p.m.: 22 IR 702, eff Jan 1, 1999)*

45 IAC 1.1-2-14 Motor vehicle dealers

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-2-5

Sec. 14. (a) A payment or credit to a motor vehicle dealer from a manufacturer is taxable at the high rate of tax for the following services:

(1) The preparation and cleanup of a new car to make it salable.
(2) The replacement or repair of a defective part or correction of an improper installation on a recalled car.
(3) Any work performed on a car that is covered by a factory warranty.

(b) The gross income received by a motor vehicle dealer for services performed after the transfer of a vehicle is subject to the high rate of tax. Transfer of the vehicle takes place when the purchaser takes possession and control of the vehicle and assumes the risk of loss, even though title has not been transferred.

(c) A commission or rebate received by a motor vehicle dealer from a finance company or bank which finances the purchase

of a motor vehicle is subject to the high rate of tax.

(d) The provisions of 45 IAC 1.1-6-6 apply to a sale or exchange of motor vehicles between registered motor vehicle dealers. *(Department of State Revenue; 45 IAC 1.1-2-14; filed Oct 16, 1998, 3:45 p.m.: 22 IR 702, eff Jan 1, 1999)*

45 IAC 1.1-2-15 Prizes, premiums, and awards

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-2-5; IC 6-2.1-3-30; IC 25-9-1

Sec. 15. (a) The gross income received as a prize, a premium, or an award from participation in a contest or exhibition is taxable at the high rate of tax.

(b) Except as provided in subsection (c), gross income derived from the operation of a contest or exhibition is taxable at the high rate of tax.

(c) Gross income which is subject to the Indiana Athletic Exhibition Tax under IC 25-9-1 is exempt from the gross income tax. *(Department of State Revenue; 45 IAC 1.1-2-15; filed Oct 16, 1998, 3:45 p.m.: 22 IR 702, eff Jan 1, 1999)*

45 IAC 1.1-2-16 Damages and judgments

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-2-5; IC 6-2.1-3-11

Sec. 16. (a) Except as otherwise provided in this section, gross income derived from the payment of damages or judgments, whether secured through suit in court or from settlement between the parties involved, is taxable at the high rate of tax.

(b) The portion of the damages or judgment that constitutes the recovery of gross income that would have been subject to the low rate of tax if otherwise paid is taxable at the low rate of tax.

(c) The portion of the damages or judgment that constitutes the recovery of gross income that would have been exempt from the gross income tax if otherwise paid is exempt from the gross income tax.

(d) An insurance recovery for damages to property is not taxable to the extent it is used to replace the damaged property with like kind property within two (2) years from the date of the recovery. As used in this subsection, "like kind" shall have the same meaning that it does in 45 IAC 1.1-6-6. Any amounts not meeting the conditions of this subsection are reported and taxed in the year of receipt. *(Department of State Revenue; 45 IAC 1.1-2-16; filed Oct 16, 1998, 3:45 p.m.: 22 IR 703, eff Jan 1, 1999)*

45 IAC 1.1-2-17 Consignment sale

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-2-8; IC 6-2.1-5-9

Sec. 17. (a) The consignee shall withhold and pay the gross income tax due on gross income received from a consignment sale.

(b) As used in this section, "consignment sale" means a sale of tangible personal property under an agreement wherein the consignee agrees to:

(1) accept certain goods from the consignor;

(2) pay the consignor for any goods sold; and

(3) return to the consignor any unsold goods.

(c) Because the tax liability of a consignee under subsection (a) is in the nature of a withholding, the consignor is also liable for the tax. Therefore, the consignor may also be pursued for payment of the tax in the case of default by the consignee.

(d) The consignee is also liable for and shall pay the gross income tax due on the gross receipts representing fees, bonuses, commissions, or other compensation for services rendered whether received by the consignee directly or as a reduction in the amount remitted to the consignor. *(Department of State Revenue; 45 IAC 1.1-2-17; filed Oct 16, 1998, 3:45 p.m.: 22 IR 703, eff Jan 1, 1999)*

45 IAC 1.1-2-18 Stockholder liability

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-2-9

Sec. 18. (a) A stockholder is liable for a percentage of the unpaid gross income tax of an organization under the following circumstances:

(1) The organization owes unpaid gross income tax at the time of its dissolution, whether assessed before or after its dissolution.

(2) The stockholder receives a distribution of the assets of the organization due to its dissolution.

(b) The tax owed by the stockholder is determined by multiplying the unpaid gross income tax of the organization by the percentage of the total outstanding stock of the organization held by the stockholder at the time of the organization's dissolution. However, the stockholder's liability is limited to the extent of the assets received from the organization. *(Department of State Revenue; 45 IAC 1.1-2-18; filed Oct 16, 1998, 3:45 p.m.: 22 IR 703, eff Jan 1, 1999)*

45 IAC 1.1-2-19 Sale or transfer of real estate

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1

Sec. 19. (a) Except as provided in subsection (b), the gross income from a sale or transfer of an interest in real estate shall be subject to the gross income tax if the seller or grantor is a taxpayer subject to IC 6-2.1.

(b) The amount of any receipts that represent a mortgage or similar encumbrance, but not any interest due thereon, that exists on real estate at the time of its sale is exempt from the gross income tax under the following circumstances:

(1) The mortgage is paid off as a result of the sale.

(2) The mortgage is assumed by the purchaser.

(3) The property is transferred subject to the mortgage.

If only part of the property covered by a mortgage or similar encumbrance is sold, the exemption is limited to the percentage that the cost of the real estate sold bears to the total cost of all the real estate covered by the mortgage.

(c) A mortgage or similar encumbrance created for the purpose of avoiding the gross income tax shall void the exemption granted under subsection (b).

(d) The gross income from a sale or transfer of an interest in real estate is taxable at the higher rate.

(e) The taxpayer shall pay the gross income tax due to the treasurer of the county in which the real estate is located. The instrument of transfer shall be marked “gross income tax paid” and provide the date of payment, the amount of tax paid, and any other information required by the department.

(f) The county treasurer shall remit the gross income tax collected, less one percent (1%), from the sale or transfer of an interest in real estate to the department on the fifteenth day of January, April, July, and October for the preceding quarterly period. If the average monthly amount due for the preceding year exceeds ten thousand dollars ($10,000), the county treasurer is required to pay the taxes by electronic fund transfer or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department on or before the date the tax is due.

(g) The county recorder may not accept an instrument of conveyance for recording unless:

(1) it displays the gross income tax paid pursuant to subsection (e); or

(2) it is accompanied by an affidavit, signed by the seller or grantor, which states that gross income tax is not due on the sale or transfer.

(h) Amounts received from the condemnation of real estate, or a sale under threat of condemnation, are exempt from the gross income tax if both of the following conditions are met:

(1) The condemnation is by Indiana or an organization which Indiana has given the power of condemnation.

(2) The proceeds are used to purchase similar property within two (2) years after receipt.

As used in subdivision (2), “similar” means the replacement property is related in service or use to the converted property. Any amounts not meeting the conditions for exemption are reported and taxed in the tax year of receipt. *(Department of State Revenue; 45 IAC 1.1-2-19; filed Oct 16, 1998, 3:45 p.m.: 22 IR 703, eff Jan 1, 1999)*

45 IAC 1.1-2-20 Liability for tax on sale of real estate

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-2-10

Sec. 20. (a) The receipt of gross income from the sale of real estate is subject to tax. If the seller adds the amount of gross

income tax due to the agreed purchase price, the amount is includable in gross income and subject to tax.

(b) Generally, the tax is due at the time the interest in the property is transferred. However, payments from a conditional or installment sale are included in gross income in the year received if such year is before the year in which the interest in the property is transferred.

(c) An entity that receives an interest in real estate, by purchase or from or through a purchaser, is not responsible or liable for determining or paying the tax owed on the gross income received by the seller. *(Department of State Revenue; 45 IAC 1.1-2-20; filed Oct 16, 1998, 3:45 p.m.: 22 IR 704, eff Jan 1, 1999)*

Rule 3. Exemptions

45 IAC 1.1-3-1 Securities issued by the United States

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-3-1

Sec. 1. (a) Earnings paid to holders of securities issued by the federal government are exempt from the gross income tax to the extent the United States Constitution prohibits the states from taxing such income.

(b) As used in this section, "earnings" means the amount paid less the expenses related to such income. The term does not include the gain derived from the sale of such securities.

(c) As used in this section, "securities issued by the federal government" means direct obligations issued by a federal agency. The term does not include the following:

(1) Securities issued by an entity sponsored by, but not a part of, the federal government.

(2) Securities guaranteed by, but not issued by, an agency of the federal government.

(d) The exemption provided by subsection (a) applies to the proportionate share of earnings received by a taxpayer from an investment fund that invests in federal government securities. In other words, the exemption passes through to the ultimate taxpayer. *(Department of State Revenue; 45 IAC 1.1-3-1; filed Oct 16, 1998, 3:45 p.m.: 22 IR 704, eff Jan 1, 1999)*

45 IAC 1.1-3-2 Sales to the federal government

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-3-2

Sec. 2. (a) Gross income derived from sales to the federal government is taxable unless such income is prohibited from taxation by the United States Constitution.

(b) The income from such sales is taxable even though the gross income tax is paid indirectly by the federal government, either as a reimbursement or as an inclusion in the purchase price. *(Department of State Revenue; 45 IAC 1.1-3-2; filed Oct 16, 1998, 3:45 p.m.: 22 IR 704, eff Jan 1, 1999)*

45 IAC 1.1-3-3 Interstate commerce

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-3-3

Sec. 3. (a) Gross income derived from business conducted in interstate commerce is exempt from the gross income tax to the extent such taxation is prohibited by the United States Constitution.

(b) As used in this section, "interstate commerce" means business conducted by the taxpayer between Indiana and another state or a foreign country.

(c) Gross income derived from the sale of tangible personal property in interstate commerce is not subject to the gross income tax if the sale is not completed in Indiana. The following examples are situations where a sale is not completed in Indiana prior to or after shipment in interstate commerce:

(1) A sale to a nonresident where the seller, as part of the contract, ships the goods to an out-of-state location via:

(A) its own carrier;

(B) its contract carrier; or

(C) common carrier.

(2) A sale of fungible goods to a nonresident where delivery of the product occurs out-of-state or at the state line.

(3) A sale to a nonresident where the goods are picked up in Indiana and delivered to an out-of-state location by a common or contract carrier which was ordered to do so by the buyer.

(4) A sale to an Indiana buyer by a nonresident with no in-state business situs or activities where the goods are shipped from out-of-state.

(5) A sale to an Indiana buyer by a nonresident with an in-state business situs or activities but the situs or activities are not significantly associated with the sale because it was initiated, negotiated, and serviced by out-of-state personnel, and the goods are shipped from out-of-state. The in-state business situs or activities will be considered significantly associated with the sale if the sale is initiated, negotiated, or serviced by in-state personnel.

(6) A sale, not otherwise taxable, to an Indiana buyer by a nonresident where the seller, because of its special skill or expertise, assembles or installs the product at the buyer's place of business without any additional services being rendered. In other words, the services performed are part of the sale and the sale is exempt because it is in interstate commerce.

(7) A sale of stock to a nonresident, whether made through an Indiana or nonresident broker, that is completed on a security exchange in another state.

(d) Gross income derived from the sale of tangible personal property in interstate commerce is subject to the gross income tax if the sale is completed in Indiana. The following examples are situations where a sale is completed in Indiana prior to or after shipment in interstate commerce:

(1) A sale to a nonresident where the goods are picked up in Indiana by the buyer via its own carrier.

(2) A sale to a nonresident where the goods become the property of the buyer but are kept within Indiana by the seller until they are resold by the buyer and delivered at the buyer's direction.

(3) A sale to an Indiana buyer where delivery is made by the Indiana seller to a nonresident customer of the buyer.

(4) A sale to a nonresident where the goods are shipped from a point in Indiana to a point in Indiana.

(5) A sale to the federal government where the goods are shipped to an out-of-state location on a government bill of lading.

(6) A sale to an Indiana buyer by a nonresident seller after the goods are transported into Indiana.

(7) A sale to an Indiana buyer by a nonresident seller if the sale:

(A) originated from;

(B) was channeled through; or

(C) was otherwise connected with;

an Indiana business situs established by the seller.

(8) A sale to an Indiana buyer by a resident seller even though such goods are shipped from outside Indiana.

(e) The following matters are not determinative in whether or not a sale is completed in Indiana:

(1) The place at which title or risk of loss passes.

(2) The place at which the goods are inspected, tested, and accepted.

(3) The place designated by F.O.B. terms.

(4) The party shown as shipper of record on the bill of lading.

(f) As used in this section, "gross income derived from the sale of tangible personal property" includes income for the performance of services rendered before delivery of a product such as charges for:

(1) preparation;

(2) fabrication;

(3) alteration;

(4) modification;

(5) finishing;

(6) completion; or

(7) delivery.

(g) As used in this section, "resident" means that the entity referred to is formed or organized under the laws of Indiana or whose commercial domicile is in Indiana.

(h) As used in this section, "nonresident" means that the entity referred to is not formed or organized under the laws of Indiana and its commercial domicile is not in Indiana.

(i) As used in subsections (g) and (h), "commercial domicile" has the same meaning as under 45 IAC 1.1-6-2(e).

(j) As used in this section, "Indiana buyer" and "Indiana seller" include a nonresident if the sale or purchase is from, to, or otherwise significantly associated with, an Indiana business situs established by the nonresident. *(Department of State Revenue; 45*

IAC 1.1-3-3; filed Oct 16, 1998, 3:45 p.m.: 22 IR 704, eff Jan 1, 1999)

45 IAC 1.1-3-4 Commercial printing

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-3-3.5

Sec. 4. (a) Gross income of a commercial printer derived from the business of commercial printing that results in printed material, excluding the business of photocopying, is exempt from the gross income tax if the printed material is:

(1) shipped outside Indiana;

(2) mailed outside Indiana; or

(3) delivered outside Indiana;

from the commercial printer's premises.

(b) The exemption provided by subsection (a) is not available if the printed material is delivered inside Indiana, even though subsequently shipped, mailed, or delivered outside Indiana. *(Department of State Revenue; 45 IAC 1.1-3-4; filed Oct 16, 1998, 3:45 p.m.: 22 IR 705, eff Jan 1, 1999)*

45 IAC 1.1-3-5 Interstate transportation

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-3-4

Sec. 5. (a) Gross income derived from the interstate transportation of property or passengers is exempt from the gross income tax under the following conditions:

(1) The property is transported by truck or rail.

(2) Passengers are transported by bus or rail.

(3) The activity involved is an initial, intermediate, or final link in such interstate transportation.

For example, a product whose designation is South Bend is transported by rail to a depot in Indianapolis and off loaded. It is then loaded on a truck for transportation to South Bend. This is the final link in the interstate transportation.

(b) The exemption provided by subsection (a) does not apply to income derived from the transportation of property or passengers between two (2) points in Indiana, even if the property or passengers are later transported out of Indiana or earlier transported into Indiana. For example, a product is shipped by truck from out of state to a warehouse in Indianapolis. The goods are later sold and delivered by truck to South Bend. The transportation of the goods between Indianapolis and South Bend is not the final link in the interstate transportation because the interstate transportation came to an end in Indianapolis.

(c) The exemption provided by subsection (a) only applies to the income of an interstate carrier and not to the income of a taxpayer providing goods or services to an interstate carrier.

(d) Gross income derived from the sale of air transportation or the carriage of persons traveling in air commerce is exempt from the gross income tax under 49 U.S.C. 1513(a). *(Department of State Revenue; 45 IAC 1.1-3-5; filed Oct 16, 1998, 3:45 p.m.: 22 IR 706, eff Jan 1, 1999)*

45 IAC 1.1-3-6 Tax collections

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-3; IC 6-6-2.5-35

Sec. 6. (a) As used in this section, "collection agent" means any taxpayer who has been explicitly designated as a collection agent for a tax by the statute under which the tax is imposed. The term includes, in the case of upstream collection statutes such as IC 6-6-2.5-35, each reseller who sets out the tax as a separate line item on its invoices and billings.

(b) Except as otherwise provided in this section, a tax that a taxpayer is required to collect as a collecting agent for Indiana or the federal government is exempt from the gross income tax.

(c) Except as otherwise provided in this section, the exemption provided by subsection (b) does not apply to a tax imposed directly upon the collecting agent, even though such tax is passed on to the ultimate consumer as either an addition to or an inclusion in the price of the product sold.

(d) Taxes exempt from the gross income tax under subsection (b) include taxes such as the following:

(1) The sales tax.
(2) The Indiana motor fuel tax.
(3) The federal motor fuel taxes (gasoline and diesel fuel).
(4) The Indiana special fuel tax.
(5) The cigarette tax.

Taxes not exempt under subsection (b) include taxes such as the alcoholic beverages tax and the other tobacco products tax. Also, not exempt under subsection (b) is that portion of a tax paid to or retained by a collection agent.

(e) A retailer's excise tax imposed by the United States solely on the sale at retail of tangible personal property is exempt from the gross income tax if:

(1) the tax is remitted to the appropriate taxing authority; and
(2) the tax is separately stated as an addition to the price of the property sold.

(f) A manufacturer's excise tax imposed by the United States on motor vehicles, motor vehicle parts, and motor vehicle accessories is exempt from the gross income tax if the tax is separately stated as:

(1) an addition to the price of the property sold; or
(2) an inclusion in the price of the property sold.

(Department of State Revenue; 45 IAC 1.1-3-6; filed Oct 16, 1998, 3:45 p.m.: 22 IR 706, eff Jan 1, 1999)

45 IAC 1.1-3-7 University sponsored organizations

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-3-19; IC 6-2.1-3-23

Sec. 7. (a) Except as provided in subsections (b), (c), and (e), the gross income received by a university sponsored organization is exempt from the gross income tax. As used in this section,"university sponsored organization" means a fraternity, sorority, or student cooperative housing organization which is connected with and supervised by a college, university, or other such educational institution.

(b) The exemption provided by subsection (a) will not apply to an organization if any part of the gross income received is used for the private benefit or gain of any member, trustee, shareholder, employee, or associate of the organization. As used in this subsection, "private benefit or gain" does not include reasonable compensation to an employee for services actually performed.

(c) The exemption provided by subsection (a) will be denied under the following circumstances:

(1) The organization failed to file an application for exemption with the department within one hundred twenty (120) days after its formation.

(2) The organization failed to file a timely annual report with the department within sixty (60) days after being notified of such failure by the department.

(d) The taxpayer's exemption may be reinstated upon a showing by the organization that the failure to timely file was due to excusable neglect.

(e) The exemption provided by subsection (a) does not apply to gross income derived from an unrelated trade or business as defined in Section 513 of the Internal Revenue Code. *(Department of State Revenue; 45 IAC 1.1-3-7; filed Oct 16, 1998, 3:45 p.m.: 22 IR 706, eff Jan 1, 1999)*

45 IAC 1.1-3-8 Religious, charitable, scientific, literary, educational, or civic organizations

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-3

Sec. 8. (a) Except as provided in subsections (c), (d), and (f), the gross income received by an organization that is organized and operated exclusively for religious, charitable, scientific, literary, educational, or civic purposes is exempt from the gross income tax. As used in this section, "exclusively" means that the organization is not primarily organized or operated for any purpose other than an exempt purpose.

(b) As used in subsection (a), "civic purposes" means the promotion of the common good and general welfare (social welfare) of the people of the community. An organization that is organized and operated exclusively for civic purposes is one which is operated primarily for the purpose of bringing about civic betterments and social improvements. It is not an organization whose primary activity is operating a social club for the benefit, pleasure, or recreation of its members, or is carrying on a business with

the general public in a manner similar to organizations which are operated for profit. However, the operation of a club or restaurant by a veterans' organization chartered by the United States Congress shall be deemed to be consistent with the exempt purpose of the organization and shall be deemed to be secondary in importance to its primary civic purposes. Further, it is not an organization whose activities include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for political office. In addition, it does not include an organization such as a homeowner or condominium association.

(c) The exemption provided by subsection (a) will not apply to an organization if any part of the gross income received is used for the private benefit or gain of any member, trustee, shareholder, employee, or associate of the organization. As used in this subsection, "private benefit or gain" does not include reasonable compensation to an employee for services actually performed.

(d) The exemption provided by subsection (a) will be denied under either of the following circumstances:

(1) The organization failed to file an application for exemption with the department within one hundred twenty (120) days after its formation.

(2) The organization failed to file a timely annual report with the department within sixty (60) days after being notified of such failure by the department.

(e) The taxpayer's exemption may be reinstated upon a showing by the organization that the failure to timely file was due to excusable neglect.

(f) The exemption provided by subsection (a) does not apply to gross income derived from an unrelated trade or business as defined in Section 513 of the Internal Revenue Code. *(Department of State Revenue; 45 IAC 1.1-3-8; filed Oct 16, 1998, 3:45 p.m.: 22 IR 707, eff Jan 1, 1999)*

45 IAC 1.1-3-9 Fraternal or social organizations

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-3

Sec. 9. (a) Except as provided in subsections (b), (c), and (e), a taxpayer organized and operated for fraternal or social purposes or as a business league or association is not subject to the gross income tax on the following income:

(1) Contributions for which the payor does not receive or expect to receive services or tangible personal property.

(2) Tuition fees.

(3) Initiation fees.

(4) Membership fees for which a member does not receive specific services or tangible personal property.

(5) Earnings on or receipts from the sale of intangible property.

(6) Amounts received from conducting a convention, trade show, or exhibition.

(b) The exemption provided by subsection (a) will not apply to an organization if any part of the gross income received is used for the private benefit or gain of any member, trustee, shareholder, employee, or associate of the organization. As used in this subsection, "private benefit or gain" does not include reasonable compensation to an employee for services actually performed.

(c) The exemption provided by subsection (a) will be denied under the following circumstances:

(1) The organization failed to file an application for exemption with the department within one hundred twenty (120) days after its formation.

(2) The organization failed to file a timely annual report with the department within sixty (60) days after being notified of such failure by the department.

(d) The taxpayer's exemption may be reinstated upon a showing by the organization that the failure to timely file was due to excusable neglect.

(e) The exemption provided by subsection (a) does not apply to gross income derived from an unrelated trade or business as defined in Section 513 of the Internal Revenue Code.

(f) As used in this section, "services" means a benefit of any kind, whether direct or indirect.

(g) As used in this section, "specific services" means a distinct or particular benefit, whether direct or indirect. However, the term does not include a member's right to use any or all of a taxpayer's facilities, including the taxpayer's golf, tennis, swimming, or other athletic facilities. *(Department of State Revenue; 45 IAC 1.1-3-9; filed Oct 16, 1998, 3:45 p.m.: 22 IR 707, eff Jan 1, 1999)*

45 IAC 1.1-3-10 S corporation

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-3-24; IC 6-3-2-2.8; IC 6-3-4-13; IC 6-8.1-10

Sec. 10. (a) A taxpayer is not subject to the gross income tax if it is a corporation which is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2).

(b) A corporation will not lose its exemption under subsection (a) if it fails to comply with the requirements of IC 6-3-4-13 by not withholding the amounts prescribed by the department at the time it pays or credits amounts to a nonresident shareholder as dividends or as a share of the corporation's undistributed taxable income, but it will be subject to the penalties provided under IC 6-8.1-10.

(c) A corporation will not lose its exemption under subsection (a) solely because it has income taxable under Section 1374 or Section 1375 of the Internal Revenue Code. *(Department of State Revenue; 45 IAC 1.1-3-10; filed Oct 16, 1998, 3:45 p.m.: 22 IR 708, eff Jan 1, 1999)*

45 IAC 1.1-3-11 Special corporation

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-3-24.5; IC 6-8.1-10-2.1

Sec. 11. (a) As used in this section, "special corporation" has the same meaning as small business corporation as defined in subsection (b).

(b) As used in subsection (a), "small business corporation" has the same meaning as the definition found in Section 1361(b) of the Internal Revenue Code except that a shareholder may be a qualified trust that forms a part of an employee stock ownership plan under Section 401(a) of the Internal Revenue Code.

(c) Except as provided in subsection (d), a special corporation is not subject to the gross income tax.

(d) A special corporation is subject to the gross income tax if twenty-five percent (25%) or more of its income for the taxable year consists of passive investment income as defined in Section 1362(d)(3)(C) of the Internal Revenue Code.

(e) Upon request, the department must be provided with proof that the corporation qualifies as a special corporation for the taxable year for which the exemption is claimed.

(f) An exemption may not be denied because of a late filed return. However, a special corporation that files a return after the due date seeking an exemption from the gross income tax is subject to a penalty.

(g) The penalty provided by subsection (f) is ten percent (10%) of the corporation's adjusted gross and supplemental net income tax liabilities for the taxable year or ten dollars ($10) for each day the corporation's income tax return is past due, but not to exceed two hundred fifty dollars ($250), if no income tax liability is imposed for the taxable year. *(Department of State Revenue; 45 IAC 1.1-3-11; filed Oct 16, 1998, 3:45 p.m.: 22 IR 708, eff Jan 1, 1999)*

45 IAC 1.1-3-12 Partnership income

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-3-25; IC 6-3-1-19

Sec. 12. (a) Generally, gross income received by a partnership is not subject to the gross income tax. However, a publicly traded partnership that is treated as a corporation under Section 7704 of the Internal Revenue Code will be subject to the gross income tax.

(b) As used in this section, "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization which is not, within the meaning of IC 6-3-1-19, a corporation, a trust, or an estate. The term includes a limited liability company if it is treated as a partnership for federal income tax purposes. *(Department of State Revenue; 45 IAC 1.1-3-12; filed Oct 16, 1998, 3:45 p.m.: 22 IR 708, eff Jan 1, 1999)*

45 IAC 1.1-3-13 Trust income

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-3-26; IC 6-3-1-10; IC 6-3-1-14

Sec. 13. (a) Except as provided in subsection (b), gross income received by a trust that is defined as a "person" under IC 6-3-1-14 and is not defined as a "corporation" under IC 6-3-1-10 is exempt from the gross income tax.

(b) Each corporate beneficiary of the trust shall report for gross income tax purposes its proportionate share of the following income:

(1) Distributable net income determined under Section 643 of the Internal Revenue Code.
(2) An accumulation distribution determined under Section 665 of the Internal Revenue Code.
(3) Undistributed capital gain, determined without regard to capital losses, not otherwise included in distributable net income as determined under Section 643 of the Internal Revenue Code.

This amount shall be determined before any taxes imposed on the trust attributable to such income.

(c) The amount reported by each corporate beneficiary shall be subject to the high gross income tax rate. *(Department of State Revenue; 45 IAC 1.1-3-13; filed Oct 16, 1998, 3:45 p.m.: 22 IR 709, eff Jan 1, 1999)*

45 IAC 1.1-3-14 Indiana and its political subdivisions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-16; IC 6-2.1-3-29; IC 6-2.1-3-33

Sec. 14. (a) Gross income received by Indiana, an agency or instrumentality of Indiana, or a municipal corporation or other political subdivision of Indiana, in performance of their governmental function, is exempt from the gross income tax.

(b) As used in this section, "governmental function" includes the following:
(1) The operation of a park or recreational facility.
(2) The sale or lease of real property.
(3) The occasional sale or lease of personal property.
(4) The performance of similar governmental services.

(c) The exemption provided for in subsection (a) does not apply to receipts derived from a private or proprietary activity or business.

(d) An activity is governmental and not proprietary where it:
(1) involves the general public benefit;
(2) is not in the nature of a corporate or business undertaking for the benefit and interest of the state or political subdivision; and
(3) does not matter whether the activity is directly imposed or voluntarily assumed.

(e) The following are examples of a proprietary activity:
(1) Operation of the following:
    (A) Wharves.
    (B) City markets.
    (C) Sports arenas.
    (D) Concessions.
    (E) Gas, water, and electric utilities.
(2) Street-cutting permits.
(3) Permits for the use or entry onto property owned by the city.
(4) Street repairs and other services.
(5) Sales of byproducts of sewage disposal plants.
(6) The rental of lockers and other personal property.

(f) The following are further examples of a governmental activity:
(1) Operation of the following:
    (A) Hospitals.
    (B) Dog pounds.
    (C) Housing authorities.
    (D) Public schools (not colleges or universities).
    (E) Public libraries.
    (F) Cemeteries.
(2) Sales and issuance of bonds.
(3) Dividends, distributions, and earnings of intangibles.
(4) Sales of intangibles.
(5) Sales of permits to private industry.
(6) Fines.

(7) Street sweeping, salting, sanding, and snow removal on streets and public parking lots.
(8) Parking fees for parking on public streets and alleys, in off-street parking projects, or upon other property owned, leased, or operated by the city.
(9) Levies for the operation of sewage disposal plants and billings for sewage disposal.
(10) Hydrant rental and charges by fire departments for runs outside the city limits.
(11) Admission fees to parks.
(12) Hangar rental, landing fees, and sales of gas, oil, and parts by airports and airport authorities.
(Department of State Revenue; 45 IAC 1.1-3-14; filed Oct 16, 1998, 3:45 p.m.: 22 IR 709, eff Jan 1, 1999)

45 IAC 1.1-3-15 Revocation of exemption
Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-3; IC 6-3-7-1

Sec. 15. (a) In the event the adjusted gross income tax is held inapplicable or invalid with respect to any entity described in IC 6-3-7-1, the exemption granted such entity under IC 6-2.1-3 is revoked for the tax periods for which the adjusted gross income tax is held invalid.
(b) If an exemption is revoked under subsection (a), the entity whose exemption is revoked is subject to the gross income tax for the tax periods for which the exemption is revoked. *(Department of State Revenue; 45 IAC 1.1-3-15; filed Oct 16, 1998, 3:45 p.m.: 22 IR 709, eff Jan 1, 1999)*

45 IAC 1.1-3-16 Gambling receipts
Authority: IC 6-8.1-3-3
Affected: IC 4-30-3-7; IC 4-30-18-2; IC 4-33-2-9; IC 4-33-6; IC 6-2.1-3-34

Sec. 16. (a) Gross income from the sale of lottery tickets authorized by IC 4-30 is exempt from the gross income tax. As used in this subsection, "gross income" includes the five percent (5%) commission authorized by 65 IAC 3-4-5 and retained by the retailer.
(b) A prize payable under IC 4-30 is exempt from the gross income tax. As used in this subsection, "prize" includes the one percent (1%) commission paid by the state lottery commission to a retailer for selling a winning lottery ticket. The term does not include a cashing bonus paid by the state lottery commission to a retailer for redeeming winning lottery tickets.
(c) Gross income from a gambling game, as defined in IC 4-33-2-9, conducted by a taxpayer that possesses a valid owner's license under IC 4-33-6 is exempt from the gross income tax. *(Department of State Revenue; 45 IAC 1.1-3-16; filed Oct 16, 1998, 3:45 p.m.: 22 IR 710, eff Jan 1, 1999)*

Rule 4. Deductions

45 IAC 1.1-4-1 Annual deduction
Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-4-1

Sec. 1. (a) Except as otherwise provided in this section, a taxpayer is entitled to deduct one thousand dollars ($1,000) each taxable year from its gross income.
(b) If a taxpayer is subject to the gross income tax for less than a full year, the amount deductible is one thousand dollars ($1,000) multiplied by the number of days the taxpayer is subject to the gross income tax over the number of days in the taxpayer's taxable year.
(c) A group of taxpayers that files a consolidated return is entitled to only one (1) deduction under this section on the consolidated return.
(d) A court appointed commissioner who files a gross income tax return for the sale of real estate is entitled to only one (1) deduction under this section regardless of the number of taxpayers owning an interest in the real estate. *(Department of State Revenue; 45 IAC 1.1-4-1; filed Oct 16, 1998, 3:45 p.m.: 22 IR 710, eff Jan 1, 1999)*

45 IAC 1.1-4-2 Bad debt deduction

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-4-2; IC 6-2.5-6-9

Sec. 2. (a) An accrual basis taxpayer is entitled to deduct from its gross income each taxable year any amount written off as uncollectible for federal income tax purposes for the same taxable year if the sale representing the bad debt was subject to the gross income tax in the year reported.

(b) Any amount deducted under subsection (a) and subsequently collected by a taxpayer shall be included in the gross income of the taxpayer in the taxable year in which it is collected. *(Department of State Revenue; 45 IAC 1.1-4-2; filed Oct 16, 1998, 3:45 p.m.: 22 IR 710, eff Jan 1, 1999)*

45 IAC 1.1-4-3 Solid or hazardous waste deduction

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-4-3; IC 13-30-6

Sec. 3. (a) Except as provided in subsection (c), a taxpayer is entitled to a deduction from gross income for a particular taxable year if the following conditions are met:

(1) The taxpayer is allowed, for federal income tax purposes, a depreciation deduction on a resource recovery system.

(2) The resource recovery system processes solid waste or hazardous waste.

(b) The amount of the deduction is the total depreciation deductions with respect to the resource recovery system allowed for that taxable year under Sections 167 and 179 of the Internal Revenue Code.

(c) The deduction provided by subsection (a) shall be divided proportionately between the taxpayer's gross income subject to the high rate and the taxpayer's gross income subject to the low rate.

(d) A taxpayer is not entitled to the deduction provided by subsection (a) with respect to a resource recovery system that is directly used to dispose of hazardous waste if any of the following occurs:

(1) The taxpayer is convicted of a violation under IC 13-7-13-3 (before its repeal), IC 13-7-13-4 (before its repeal), or IC 13-30-6.

(2) The taxpayer is subject to an order or consent decree based upon a violation of a federal or state rule, regulation, or statute governing the treatment, storage, or disposal of hazardous waste that had a major or moderate potential for harm.

(e) As used in subsection (d)(2), "major or moderate potential for harm" means a violation that was injurious or threatened to:

(1) be injurious to:

(A) human health;

(B) plant or animal life; or

(C) property; or

(2) interfere unreasonably with the enjoyment of life or property.

(Department of State Revenue; 45 IAC 1.1-4-3; filed Oct 16, 1998, 3:45 p.m.: 22 IR 710, eff Jan 1, 1999; errata filed Mar 5, 1999, 9:30 a.m.: 22 IR 2273)

45 IAC 1.1-4-4 Refund of reusable container deposit

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-4-5

Sec. 4. (a) A reusable container deposit refunded to a person returning the reusable container is deductible from the payor's gross income if the payor originally included such deposits in its gross income.

(b) The deduction may be taken by the taxpayer in calculating the gross income tax due on its quarterly returns. *(Department of State Revenue; 45 IAC 1.1-4-4; filed Oct 16, 1998, 3:45 p.m.: 22 IR 711, eff Jan 1, 1999)*

45 IAC 1.1-4-5 Intercompany transactions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-5-5; IC 6-5.5

Sec. 5. (a) Except as provided in subsections (b) and (c), an affiliated group of corporations, as defined in IC 6-2.1-5-5, is entitled to a deduction from the gross income reported on the consolidated return. The amount of the deduction is the total gross income received from transactions between the members of the group.

(b) The deduction provided by subsection (a) does not apply to gross income received because of the dissolution of a member of the affiliated group. Also, the deduction does not apply to gross income derived from sources outside Indiana. Nor does the deduction apply to gross income derived from an affiliate not qualifying to be included in the consolidated filing.

(c) In addition to subsection (a), all income and deductions attributable to transactions between two (2) entities are eliminated in determining the amount of gross income tax due when all three (3) of the following conditions exist:

(1) The first entity is subject to taxation under IC 6-2.1.

(2) The second entity is subject to taxation under IC 6-5.5.

(3) The entities are members of the same unitary group.

(d) Income shall not be deducted twice. For instance, income may not be deducted as being received in an intercompany transaction if it has already been deducted as having been received in an interstate commerce transaction. *(Department of State Revenue; 45 IAC 1.1-4-5; filed Oct 16, 1998, 3:45 p.m.: 22 IR 711, eff Jan 1, 1999)*

Rule 5. Returns

45 IAC 1.1-5-1 Quarterly returns and payments

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-5-1.1; IC 6-2.1-6

Sec. 1. (a) Except as provided otherwise in this section, a taxpayer shall pay its gross income tax liability on a quarterly basis. The tax must be paid with a form prescribed by the department.

(b) For taxable years beginning after December 31, 1993, the tax is due on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year.

(c) In determining the amount due, the taxpayer is entitled to deduct any gross income tax withheld pursuant to IC 6-2.1-6 for the same quarter.

(d) A taxpayer is not required to remit the gross income tax for a quarter for which the gross amount estimated to be due is determined to be two hundred fifty dollars ($250) or less.

(e) The fourth quarterly payment is not required if the taxpayer files its annual return and pays the total gross income tax liability for its taxable year before the due date of the fourth quarterly payment.

(f) After December 31, 1997, a taxpayer whose quarterly gross income tax liability exceeds ten thousand dollars ($10,000) is required to pay the taxes by electronic fund transfer or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department.

(g) A taxpayer's quarterly gross income tax liability shall be deemed to exceed ten thousand dollars ($10,000) if:

(1) its total estimated gross income tax for the current year exceeds forty thousand dollars ($40,000); or

(2) its total gross income tax liability for the preceding year exceeded forty thousand dollars ($40,000).

(h) If a taxpayer is required to make its quarterly gross income tax payments by electronic fund transfer, it is not required to file the quarterly gross income tax return. *(Department of State Revenue; 45 IAC 1.1-5-1; filed Oct 16, 1998, 3:45 p.m.: 22 IR 711, eff Jan 1, 1999)*

45 IAC 1.1-5-2 Annual return

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-5-2; IC 6-2.1-5-2.1; IC 6-2.1-6

Sec. 2. (a) An annual gross income tax return is required to be filed by a taxpayer who receives more than one thousand dollars ($1,000) in gross income during a taxable year. Any gross income taxes not previously paid shall be paid at the time the annual return is filed.

(b) Except as provided otherwise in this section, the annual gross income tax return is due on the fifteenth day of the fourth month following the end of the taxpayer's taxable year.

(c) A taxpayer with any gross income subject to the withholding requirements of IC 6-2.1-6 shall file its annual gross income

tax return by March 1 of the calendar year following the year in which the tax was withheld or should have been withheld.

(d) Due to federal filing requirements, a taxpayer may be allowed a due date different from the date specified in subsection (b). For example, the annual gross income tax returns for the following taxpayers are due on the dates given:

(1) An exempt organization subject to tax under Section 511 of the Internal Revenue Code has until the fifteenth day of the fifth month following the end of its taxable year to file its annual gross income tax return.

(2) A farmers' cooperative described in Section 1381 of the Internal Revenue Code has until the fifteenth day of the ninth month following the end of its taxable year to file its annual gross income tax return.

(e) A taxpayer not filing an annual gross income tax return may be required to execute and file a sworn affidavit that it did not receive more than one thousand dollars ($1,000) of taxable gross income during its taxable year. *(Department of State Revenue; 45 IAC 1.1-5-2; filed Oct 16, 1998, 3:45 p.m.: 22 IR 711, eff Jan 1, 1999; errata filed Mar 5, 1999, 9:30 a.m.: 22 IR 2273)*

45 IAC 1.1-5-3 Consolidated return

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-5-5; IC 23-1

Sec. 3. (a) An affiliated group, as defined in IC 6-2.1-5-5, may file a consolidated gross income tax return. To be included in the consolidated filing, a member of the group must be incorporated in the state of Indiana or authorized to do business in the state of Indiana on or before the due date of the annual return, including valid extensions.

(b) As used in subsection (a), “authorized to do business in Indiana” means that:

(1) a foreign corporation has applied for and been granted a certificate of authority to transact business in Indiana under the appropriate statute; and

(2) the authority has not been withdrawn or revoked.

(c) An affiliated group may elect to file a consolidated return at the time it files its first annual return. After the first annual return is filed, an affiliated group must ask for and receive the department's approval to change the manner in which it files gross income tax returns.

(d) An affiliated group may choose any member of the group to be the reporting company and file the first consolidated return. Any future change in the reporting member who files the consolidated return must be approved in advance by the department.

(e) Each member included in the consolidated filing is jointly and severally liable for the gross income tax imposed on the affiliated group as a whole and imposed separately on each member of the consolidated filing.

(f) An affiliated group must ask for and receive the department's approval to change from a consolidated return filing to a separate return filing. Such approval will be granted only upon a showing of changes in the law or circumstances that would cause a consolidated return filing to unfairly reflect the Indiana source income of the members of the affiliated group.

(g) An affiliated group filing a consolidated annual return shall file its quarterly returns on a consolidated basis by the same member required to file the annual return. If consolidated quarterly returns have not been filed by the affiliated group, the members of the group will be required to segregate their receipts and verify the proper credit to be taken on the annual return for quarterly payments made.

(h) If the adjusted gross income tax returns for the members of the affiliated group are filed on a separate basis, the burden will be on the members of the affiliated group to provide a complete breakdown of each member's gross, adjusted gross, and supplemental net income tax liabilities, quarterly payments, and other credits. *(Department of State Revenue; 45 IAC 1.1-5-3; filed Oct 16, 1998, 3:45 p.m.: 22 IR 712, eff Jan 1, 1999)*

45 IAC 1.1-5-4 Partnership return

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-11; IC 6-2.1-1-16; IC 6-3-4-10

Sec. 4. (a) A partnership must file an annual return, Form IT-65, disclosing each partner's distributive share of distributed and undistributed income.

(b) As used in this section, “partner's distributive share” means the amount determined under Section 704 of the Internal Revenue Code and its prescribed regulations before any modifications required by Indiana tax statutes. *(Department of State Revenue; 45 IAC 1.1-5-4; filed Oct 16, 1998, 3:45 p.m.: 22 IR 712, eff Jan 1, 1999)*

45 IAC 1.1-5-5 Liability of a fiduciary and a distributee

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-5-7

Sec. 5. (a) A receiver, trustee in dissolution, trustee in bankruptcy, or assignee has the same duties and responsibilities under this article as the taxpayer whose property or business the fiduciary is operating.

(b) The fiduciary is also required to report all gross income previously unreported and pay the taxes due thereon even though such income was never received by the fiduciary.

(c) In addition to the liability of the fiduciary, each distributee is also proportionately liable for any gross income tax due and not paid at the time of the distribution.

(d) A resident fiduciary described in subsection (a) shall withhold and pay to the department any gross income tax due on a distribution to a nonresident distributee before making the distribution. *(Department of State Revenue; 45 IAC 1.1-5-5; filed Oct 16, 1998, 3:45 p.m.: 22 IR 713, eff Jan 1, 1999)*

45 IAC 1.1-5-6 A fiduciary acting under court supervision

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-5-7; IC 6-2.1-5-8; IC 6-2.1-8-7

Sec. 6. (a) A fiduciary acting under court supervision includes the following:

(1) A receiver.

(2) A trustee in dissolution.

(3) A trustee in bankruptcy.

(4) A commissioner appointed for the sale of real estate.

(5) Any other officer acting under the authority and supervision of a court.

(b) A court shall not allow or approve a final report or account of a fiduciary described in subsection (a) unless the account or report shows, and the court finds, that all:

(1) gross income tax returns have been filed;

(2) gross income tax due has been paid; and

(3) gross income tax which may become due is secured by bond, deposit, or otherwise.

(c) A fiduciary shall provide the proof required in subsection (b) by either of the following methods:

(1) By a certificate of clearance issued by the department certifying that all gross income tax due has been paid and that any required security has been provided.

(2) By any other evidence which demonstrates that all gross income tax due has been paid and that any required security has been provided.

(d) The gross income tax liability owed by a fiduciary is a preferred claim and has priority over all other claims except claims for judicial costs and costs of administration. *(Department of State Revenue; 45 IAC 1.1-5-6; filed Oct 16, 1998, 3:45 p.m.: 22 IR 713, eff Jan 1, 1999)*

45 IAC 1.1-5-7 Accounting methods

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-5-12

Sec. 7. (a) A taxpayer shall use either the cash or accrual method of accounting for determining the gross income tax liability.

(b) The taxpayer shall use the same method of accounting used for federal income tax purposes. However, the taxpayer shall use the cash method of accounting if it does not use either the cash or the accrual method of accounting for federal income tax purposes.

(c) As used in this section, "cash method of accounting" means that gross income is reported in the year that it is actually or constructively received and deductions or credits are generally taken in the year actually paid unless they should be taken in a different period to clearly reflect income. Examples include depreciation allowances and prepaid expenses.

(d) As used in this section, "accrual method of accounting" means that gross income is reported and expenses are deductible when all the events have occurred that determine the right to the income or that determine the amount of the expense and the liability

of the taxpayer to pay it. The term does not include any method of accounting other than the standard accrual basis method of accounting. *(Department of State Revenue; 45 IAC 1.1-5-7; filed Oct 16, 1998, 3:45 p.m.: 22 IR 713, eff Jan 1, 1999)*

45 IAC 1.1-5-8 Withholding return

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-5; IC 6-2.1-6-1; IC 6-2.1-6-2; IC 6-3-4-8.1

Sec. 8. (a) For taxable years beginning after December 31, 1993, a withholding agent who is required to withhold gross income tax under IC 6-2.1-6-1 or IC 6-2.1-6-2 is required to file a return and pay the tax withheld to the department on April 20, June 20, September 20, and December 20 of each calendar year. The return shall show the amount withheld from the gross income paid to each taxpayer.

(b) The withholding agent is not liable to a taxpayer for any amounts withheld and paid to the department in accordance with this section.

(c) Gross income tax should not be withheld on the first one thousand dollars ($1,000) paid to a taxpayer during a taxable year.

(d) The amount of gross income tax withheld shall be determined by applying the high rate of tax to the total amount of gross income without any deductions.

(e) A withholding agent shall furnish, in duplicate, a written statement to a taxpayer showing the total amount of gross income and the tax withheld therefrom, for the preceding calendar year, on or before January 31 of the year immediately following the year in which the tax was withheld.

(f) To receive credit for taxes withheld, a taxpayer must attach to its annual gross income tax return a copy of the written statement received from the withholding agent pursuant to subsection (e).

(g) Taxpayers who combine monthly employee and nonresident contractor withholding are permitted to file and pay both amounts twenty (20) days after the end of each month. *(Department of State Revenue; 45 IAC 1.1-5-8; filed Oct 16, 1998, 3:45 p.m.: 22 IR 713, eff Jan 1, 1999)*

Rule 6. Exclusions

45 IAC 1.1-6-1 Retail installment contract or promissory note

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-2

Sec. 1. (a) Except as otherwise provided in this section, the face amount of a retail installment contract or promissory note accepted as the basis under which payment is to be made is includable in gross income upon receipt of the note or contract.

(b) Subsection (a) applies only to income that is derived from the selling, providing, repairing, working with or on, or servicing of any tangible personal property.

(c) Any part of the contract or note that represents insurance premiums or consideration which the buyer contracts to pay the seller for the privilege of paying the principal balance in installments is includable in gross income when received.

(d) Income from the subsequent sale of a retail installment contract or promissory note is includable in gross income unless it was previously subjected to the gross income tax. *(Department of State Revenue; 45 IAC 1.1-6-1; filed Oct 16, 1998, 3:45 p.m.: 22 IR 714, eff Jan 1, 1999)*

45 IAC 1.1-6-2 Intangibles

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-2

Sec. 2. (a) As used in this section, “intangible” means a personal property right, which exists only in connection with something else, the evidence of such right being represented by such things as the following:

(1) Notes.
(2) Stocks.
(3) Bonds.
(4) Debentures.

(5) Certificates of deposit.
(6) Leases.
(7) Choses in action.
(b) Except as provided in subsection (c), receipts derived from an intangible are included in gross income.
(c) Receipts derived from an intangible are not included in gross income under the following situations:
(1) The intangible forms an integral part of:
(A) a trade or business situated and regularly carried on at a business situs outside Indiana; or
(B) activities incident to such trade or business.
(2) The intangible does not form an integral part of a trade or business situated and regularly carried on at a business situs in Indiana, and the taxpayer's commercial domicile is located outside Indiana.
(3) The receipts from the intangible are otherwise excluded from gross income under IC 6-2.1-1-2 or 45 IAC 1.1-3-3(c)(7).
(d) In determining whether an intangible forms an integral part of a trade or business or activities incident thereto under subsection (c), it is the connection of the intangible itself to such trade or business or activities incident thereto that is the controlling factor. The physical location of the evidence of the intangible (share of stock, bond, etc.) is not a controlling factor. Also, any activities related to the sale of an intangible occur after the fact and are never determinative.
(e) As used in this section, "commercial domicile" means the nerve center of the taxpayer where a majority of the activities and functions of the business are performed. The department will include the following types of activities in making a determination of commercial domicile:
(1) The location of management and administrative activities connected with each location, such as policy and investment decisions.
(2) The location of meetings of the board of directors.
(3) The residence of executives and their offices.
(4) The location of books and records.
(5) The location of payment on income from intangibles of the taxpayer.
(6) The information from annual and quarterly reports of the taxpayer.
(Department of State Revenue; 45 IAC 1.1-6-2; filed Oct 16, 1998, 3:45 p.m.: 22 IR 714, eff Jan 1, 1999)

45 IAC 1.1-6-3 Bonds
Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-2; IC 6-8-5-1

Sec. 3. (a) Except as otherwise provided in this section, receipts from the issuance or redemption of a bond are not included in gross income.
(b) Interest accumulated at the time of redemption of a bond is included in gross income except for interest derived from securities issued by the federal government and bonds of Indiana municipalities or taxing subdivisions.
(c) Gain derived from the sale or redemption of a bond is included in gross income even when the interest derived from the bond is otherwise excluded from gross income. *(Department of State Revenue; 45 IAC 1.1-6-3; filed Oct 16, 1998, 3:45 p.m.: 22 IR 714, eff Jan 1, 1999)*

45 IAC 1.1-6-4 Refunds
Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-2

Sec. 4. (a) As used in this section, "refund" means:
(1) an amount representing an overpayment;
(2) the value of property returned to the seller; or
(3) an adjustment to the selling price of property or services that is later received by the buyer in cash or in credit.
(b) A refund received by a buyer is excludable from gross income in the year received unless such amount was excluded from gross income when the property or services were originally purchased.
(c) A refund received by a seller is excludable from gross income in the year received unless such amount was not included in gross income when the property was originally sold.

(d) The term does not include a patronage dividend because it is a distribution to a member based on the overall efficient management and operation of the cooperative. *(Department of State Revenue; 45 IAC 1.1-6-4; filed Oct 16, 1998, 3:45 p.m.: 22 IR 715, eff Jan 1, 1999)*

45 IAC 1.1-6-5 Contributions to capital

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-2

Sec. 5. (a) Except as provided in subsection (b), a contribution to the capital of a taxpayer, whether or not from the sale of an interest in such taxpayer, is not included in the gross income of such taxpayer.

(b) Except as provided in subsection (e), the exclusion provided by subsection (a) does not apply to income derived from any subsequent transaction in a taxpayer's stock or in the interest or share of a member of the taxpayer.

(c) To qualify as a contribution to capital, it must be shown that the principal benefit derived from a contribution is a capital improvement, a strengthening of the capital structure of the taxpayer, or an enhancement of the contributor's ownership interest. The following are examples of a contribution to capital:

(1) A voluntary pro rata payment by a shareholder to a corporation, the amounts so received being credited to the taxpayer's surplus account or to a special account.

(2) A contribution of land or other property to a corporation by a governmental unit or by a civic group for the purpose of inducing the corporation to locate its business in a particular community.

(3) A contribution by a shopping center developer of land and building costs to a corporation to attract it as the anchor tenant for a shopping center.

(d) As used in this section, "contribution to capital" does not include a loan or any money or property transferred to a taxpayer in consideration for goods or services rendered or to be rendered at some time in the future. The following are examples of contributions not qualifying as contributions to capital:

(1) A subsidy paid for the purpose of inducing a taxpayer to limit production.

(2) A contribution to a utility to provide or encourage the provision of services to or for the benefit of the contributor or the contributor's customers.

(3) Any other contribution in aid of construction as a customer or potential customer, or on behalf of a customer or potential customer. However, a contribution in aid of construction will be recognized as a contribution to capital if:

(A) it is not made in connection with the provision of services; and

(B) the benefit of the public as a whole is the primary motivating factor.

An example of this is when a utility is reimbursed for the cost of relocating lines to accommodate highway construction.

(e) A distribution in property in any form from a corporation to its shareholders in consideration for the return, surrender, cancellation, retirement, or rendering without value of its issued stock does not result in gross income to the corporation.

(f) A sale of treasury stock which has been issued, repurchased, or otherwise acquired results in gross income to the corporation. *(Department of State Revenue; 45 IAC 1.1-6-5; filed Oct 16, 1998, 3:45 p.m.: 22 IR 715, eff Jan 1, 1999)*

45 IAC 1.1-6-6 Reciprocal exchange of like kind property

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-2; IC 6-2.1-3-14

Sec. 6. (a) As used in this section, "like kind" means property of the same class having common characteristics or attributes but not necessarily of the same grade or quality.

(b) As used in this section, "reciprocal exchange" means the transfer of ownership of property by barter or swap by and between the owners of the property. The property must have been acquired prior to the exchange but not with the intent of effectuating an exchange.

(c) As used in subsection (b), "exchange" does not include the following transactions:

(1) A sale of property even though other property is purchased with the proceeds.

(2) A barter or swap of property with more than two (2) parties to the transaction.

(3) A transaction where the property transferred is acquired by a party to the transaction as a result of negotiation or arrangement with the intent of effectuating an exchange.

(d) The value of real or tangible personal property received in a reciprocal exchange of like kind property is excluded from gross income.

(e) The reciprocal exchange of like kind property may be made with or without additional consideration. However, the receipt of additional consideration, whether in cash or unlike kind property, is includable in gross income. Any amount received by a retail merchant because of an encumbrance on tangible personal property involved in a reciprocal exchange of like kind property is not additional consideration.

(f) The value of real or tangible personal property allowed for a trade-in on the purchase of like kind property qualifies for the exclusion provided by subsection (d).

(g) In addition to a reciprocal exchange, gross receipts from a sale of a new, untitled, and unregistered motor vehicle between registered motor vehicle dealers enfranchised by the same motor vehicle manufacturer or distributor to sell or service motor vehicles of the same make are exempt from the gross income tax. *(Department of State Revenue; 45 IAC 1.1-6-6; filed Oct 16, 1998, 3:45 p.m.: 22 IR 715, eff Jan 1, 1999)*

45 IAC 1.1-6-7 Reciprocal exchange of securities

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-2

Sec. 7. (a) As used in this section, "reciprocal exchange" means the transfer of ownership of property by barter or swap by and between the owners of the property. The property must have been acquired prior to the exchange but not with the intent of effectuating an exchange.

(b) As used in subsection (a), "exchange" does not include the following transactions:

(1) A sale of property even though other property is purchased with the proceeds.

(2) A barter or swap of property with more than two (2) parties to the transaction.

(3) A transaction where the property transferred is acquired by a party to the transaction as a result of negotiation or arrangement with the intent of effectuating an exchange.

(c) The value of stock received in a reciprocal exchange for stock in the same corporation or association is excluded from gross income to the extent of the value of the stock surrendered.

(d) The value of bonds or similar securities received in a reciprocal exchange for bonds or similar securities of the same corporation or association is excluded from gross income to the extent of the value of the bonds or similar securities surrendered. *(Department of State Revenue; 45 IAC 1.1-6-7; filed Oct 16, 1998, 3:45 p.m.: 22 IR 716, eff Jan 1, 1999)*

45 IAC 1.1-6-8 Reciprocal exchange in a reorganization

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-2

Sec. 8. (a) As used in this section, "reciprocal exchange" means the transfer of ownership of property by barter or swap by and between the owners of the property. The property must have been acquired prior to the exchange but not with the intent of effectuating an exchange.

(b) As used in subsection (a), "exchange" does not include the following transactions:

(1) A sale of property even though other property is purchased with the proceeds.

(2) A barter or swap of property with more than two (2) parties to the transaction.

(3) A transaction where the property transferred is acquired by a party to the transaction as a result of negotiation or arrangement with the intent of effectuating an exchange.

(c) The value of stocks, bonds, or other securities received in a reciprocal exchange in the course of a consolidation, merger, or other reorganization is excluded from gross income under the following conditions:

(1) The exchange is securities for securities and the exclusion is limited to the extent title is surrendered in other stocks, bonds, or other securities.

(2) The stocks, bonds, or other securities are received in exchange for substantially all of the assets of another corporation.

(d) The exclusion provided by this section applies only when the stocks, bonds, or other securities received are issued by one (1) or more corporations or associations that are each a party to the reorganization.

(e) The department will generally look to the treatment by the Internal Revenue Service in determining whether a

reorganization is valid and therefore qualifying for the exclusion provided by this section. *(Department of State Revenue; 45 IAC 1.1-6-8; filed Oct 16, 1998, 3:45 p.m.: 22 IR 716, eff Jan 1, 1999)*

45 IAC 1.1-6-9 Liquidation of subsidiary into parent

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-2

Sec. 9. (a) Except as provided in subsection (b), receipts from a complete liquidation of a subsidiary corporation into its parent under Section 332 of the Internal Revenue Code shall be excluded from gross income, if the same result could have been accomplished under section 7 or 8 of this rule.

(b) The value of the transfer of property by a subsidiary corporation in satisfaction of its liability to its parent shall be included in the gross income of the subsidiary corporation. *(Department of State Revenue; 45 IAC 1.1-6-9; filed Oct 16, 1998, 3:45 p.m.: 22 IR 717, eff Jan 1, 1999)*

45 IAC 1.1-6-10 Receipts by agents

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1

Sec. 10. (a) Income received in an agency capacity is not included in the agent's gross income. This is because the income was received by the agent for the principal's benefit.

(b) The exclusion provided by subsection (a) will not apply if an agency relationship is not established or if the agent has any right, title, or interest in the money or property received from the transaction.

(c) Where property is purchased by a taxpayer for another, title need not vest immediately in the principal in order for the taxpayer's reimbursement to be excluded from gross income if the agency relationship actually exists. However, where property is purchased from the principal by the taxpayer and resold to a third party, the receipts from the sale are included in the taxpayer's gross income.

(d) The reimbursement of amounts paid to a third party under an agreement to be reimbursed by another for expenses incurred and paid to a third party is not excluded from gross income unless the party being reimbursed qualifies as the agent of the party making the reimbursement under 45 IAC 1.1-1-2. A reimbursement of a taxpayer's own expenses are never excluded from gross income.

(e) The mere execution of an agency contract will not create an agency relationship. If the agent takes title to the products, operates under its own name, and cannot bind the principal in contracts, an agency relationship has not been established. *(Department of State Revenue; 45 IAC 1.1-6-10; filed Oct 16, 1998, 3:45 p.m.: 22 IR 717, eff Jan 1, 1999)*

45 IAC 1.1-6-11 Insurance company reserves

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-1-2

Sec. 11. (a) For a domestic insurance carrier selling life insurance and annuities or accident and health insurance, amounts that become or are used to maintain a reserve or other policy liability are excluded from gross income.

(b) The portion of underwriting income required to maintain reserves or other policy liabilities is calculated by using net premiums for individual policies by state, if such records are maintained. Otherwise, the following estimation methods shall be used:

(1) For life insurance and annuity classes of business included in the Analysis of Operations section of the Annual Statement filed with the Indiana department of insurance, multiply the gross premiums (page 6, line 1, column 1) by the ratio of tabular net premiums (page 7, line 2, column 1) to the corresponding gross premium (page 4, line 1). In applying this ratio method, separate ratios for different classes of business shall be used whenever the use of an aggregate ratio would produce a material distortion in the result. For example, if the effect of reinsurance ceded is material in amount, the ceded premiums shall be added back to both tabular net premiums and to gross premiums in forming the ratio. Likewise, if reinsurance assumed is material in its effect, a separate ratio shall be computed and applied to reinsurance assumed gross premiums to produce the corresponding net premiums.

(2) For life insurance and annuity classes of business not included in the Analysis of Operations section of the Annual

Statement filed with the Indiana department of insurance, use the same ratio method described in subdivision (1) applied to the appropriate net and gross premiums.

(3) For accident and health insurance classes of business on which reserves comparable to life insurance reserves are maintained, use the difference for aggregate reserves between the years (page 3, line 2) plus incurred claims (Schedule H, page 87, line 3), less the reserve interest determined under subsection (c)(3) with respect to such classes of business as noncancellable accident and health insurance.

(4) For other accident and health business (or hospitalization), multiply the gross premiums for such business included in the Analysis of Operations section (page 6, line 1, column 1) by the ratio of claims incurred (Schedule H, page 87, line 3) to premiums earned (Schedule H, page 87, line 2). An example of business to which this method will apply is the selling of group and other short term cancellable accident and health policies.

(c) The portion of investment income required to maintain reserves or other policy liabilities is calculated as follows:

(1) For life insurance and annuity reserves included in Analysis of Increase in Reserves (page 7), use tabular interest (page 7, line 4).

(2) For reserves and other policy liabilities requiring interest which are not included in the Analysis of Increase in Reserves, such as interest on a premium deposit fund (page 3, line 10) and interest on a policy or contract fund (page 4, line 14), a separate calculation must be made.

(3) For required interest on other reserves and policy liabilities such as noncancellable accident and health insurance for which company records of net premiums for such business are available, use the reserve interest rate assumed multiplied by the mean of the policy reserves and policy liabilities at the beginning and end of the taxable year.

(d) The deductions calculated under subsections (b) and (c) are allocated between nontaxable and taxable receipts in an appropriate manner.

(e) As used in this section, the specific references to exhibits, schedules, sections, pages, or lines relate to the 1994 form of the Annual Statement filed with the Indiana department of insurance. Taxpayers are expected to use comparable sources each taxable year despite any future changes in the form of the Annual Statement required to be filed with the Indiana department of insurance. *(Department of State Revenue; 45 IAC 1.1-6-11; filed Oct 16, 1998, 3:45 p.m.: 22 IR 717, eff Jan 1, 1999)*

Rule 7. Penalties

45 IAC 1.1-7-1 Civil penalties

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1; IC 6-8.1-1-3; IC 6-8.1-10

Sec. 1. (a) As used in this rule, "person" has the same meaning set forth in IC 6-8.1-1-3.

(b) A person who violates a provision of IC 6-2.1 is subject to the penalties imposed by IC 6-8.1-10. *(Department of State Revenue; 45 IAC 1.1-7-1; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999)*

45 IAC 1.1-7-2 Criminal penalties

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-6; IC 6-2.1-7; IC 6-2.1-8-6; IC 6-8.1-5-4

Sec. 2. (a) A person commits a Class C infraction under the following circumstances:

(1) Failing to keep a record which may be necessary to determine the gross income tax owed for a period of three (3) years as required by IC 6-8.1-5-4.

(2) Failing to permit the department to examine any records necessary to determine the gross income tax due at any time in accordance with IC 6-8.1-5-4.

(b) A person commits a Class B misdemeanor under the following circumstances:

(1) Recklessly entering a false affidavit described in IC 6-2.1-8-6(a).

(2) Recklessly entering false information concerning gross income taxes paid on a deed or other instrument of conveyance.

(3) Knowingly failing to produce, or permit the department to examine, a record necessary to determine the gross income tax due.

(4) Failing to file a return required by IC 6-2.1 with the intent to defraud Indiana.

(5) Entering false information in a return required by IC 6-2.1 with the intent to defraud Indiana.
(6) Knowingly failing to permit the department to inspect or appraise any property.
(7) Knowingly failing to offer testimony or to produce any record required by IC 6-2.1.
(8) Recklessly violating a provision contained in IC 6-2.1-6.
(c) A person commits a Class D felony under the following circumstances:
(1) Making a false entry in a taxpayer's records with the intent to defraud Indiana or evade payment of the gross income tax.
(2) Keeping more than one (1) set of records for a taxpayer with the intent to defraud Indiana or evade payment of the gross income tax.

(Department of State Revenue; 45 IAC 1.1-7-2; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999)

45 IAC 1.1-7-3 Prosecution

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-7-8

Sec. 3. The department may decline to prosecute a violation of IC 6-2.1 if the violation is:
(1) a first offense; and
(2) not flagrant or willful.

(Department of State Revenue; 45 IAC 1.1-7-3; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999)

ARTICLE 2. SALES AND USE TAX (REPEALED)

(Repealed by Department of State Revenue; filed Aug 20, 1982, 3:30 pm: 5 IR 2179)

ARTICLE 2.1. SALES AND USE TAX (REPEALED)

(Repealed by Department of State Revenue; filed Dec 1, 1982, 10:35 am: 6 IR 70; errata, 6 IR 127)

ARTICLE 2.2. SALES AND USE TAX

Rule 1. Definitions

45 IAC 2.2-1-1 General definitions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 1. (a) Unitary Transaction. For purposes of the state gross retail tax and use tax, such taxes shall apply and be computed in respect to each retail unitary transaction. A unitary transaction shall include all items of property and/or services for which a total combined charge or selling price is computed for payment irrespective of the fact that services which would not otherwise be taxable are included in the charge or selling price.

(b) Unitary Transaction–Public Utility. For purposes of the state gross retail tax and use tax, all public utility services and commodities subject to said taxes invoiced in a single billing or statement, including a minimum charge, submitted to a consumer for payment shall constitute a unitary transaction.

(c) Retail Transaction. The state gross retail tax is imposed on retail transactions made in Indiana. Three general categories are designated as "retail transactions". The first category is described as transactions of a retail merchant that constitute selling at retail as described in IC 6-2.5-4-1. The second category is described as transactions of a retail merchant that constitute making a wholesale sale as described in IC 6-2.5-4-2. The third category is described as a transaction that is described in any other section of IC 6-2.5-4.

(d) Casual Sales. The Indiana gross retail tax is not imposed on gross receipts from casual sales except for gross receipts from casual sales of motor vehicles and sales of rental property. A casual sale is an isolated or occasional sale by the owner of tangible personal property purchased or otherwise acquired for his use or consumption, where he is not regularly engaged in the business of making such sales.

(e) Retail Unitary Transaction. Regulatory definition of "retail unitary transaction" is used synonymously with the act *[IC*

6-2.5].

(f) Person. Regulatory definition of "person" is used synonymously with the act *[IC 6-2.5]*.

(g) Department. Regulatory definition of "department" as the Indiana department of state revenue is used synonymously with the act *[IC 6-2.5]*.

(h) Gross Retail Income. Regulatory definition of "gross retail income" is used synonymously with the act *[IC 6-2.5]*.

(i) Gross Retail Income of a Public Utility or Power Subsidiary. Gross retail income includes all gross retail income including minimum charge, flat charge, membership fee, or any other form of charge or billing.

(j) Like Kind Exchange: Additional Consideration. Non-taxability extends only to the amount of value of the property received. Any additional consideration, commonly known as "boot", received either in cash or property of unlike kind, must be reported for taxation at actual value. However, when any property is clearly used as a medium of exchange in lieu of cash, the element of taxable exchange will be present.

(k) Like Kind Exchange: Limited to Two Parties. Non-taxable "exchanges" include only transactions for a swap or barter of property between two parties. Property received in an exchange transaction in which a third party is involved, with or without property, is subject to gross retail tax. This rule is not meant to deny non-taxability of exchanges where one or both of the parties in a two-party exchange employ an agent in carrying out the agreement.

(l) Like Kind Exchange: Property to be Owned by Parties at Time of Exchange. Non-taxable "exchanges" include only transactions in which the property exchanged is owned by the parties thereto at the time the exchange agreement is entered into. Transactions in which the property to be exchanged is acquired by one party after the agreement to exchange has been arranged are taxable. The exchange agreement must specify the definite units or quantity of property to be exchanged. However, "retail merchants" are allowed to consider as non-taxable the full value of tangible personal property of like kind received in allowable exchanges, even though ownership of the property received is encumbered by a conditional sales contract, retail installment contract, or a chattel mortgage.

(m) Internal Revenue Code. Regulatory definition of "Internal Revenue Code" as the Internal Revenue Code of 1986, is used synonymously with the act *[IC 6-2.5]*.

(n) Retail Merchant. Regulatory definition of "retail merchant" is used synonymously with the act *[IC 6-2.5]*.

(o) Tax Year or Taxable Year. Regulatory definition of "tax year" or "taxable year" is used synonymously with the act *[IC 6-2.5]*. *(Department of State Revenue; Ch. 1, Regs. 6-2.5-1-1 through 6-2.5-1-9; filed Dec 1, 1982, 10:35 am: 6 IR 8; filed Aug 6, 1987, 4:30 pm: 10 IR 2610)*

Rule 2. State Gross Retail Tax

45 IAC 2.2-2-1 Excise tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 1. An excise tax, known as the state gross retail (sales) tax is imposed on retail transaction's *[sic.]* made in Indiana. *(Department of State Revenue; Ch. 2, Reg. 6-2.5-2-1(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 9)*

45 IAC 2.2-2-2 Collection of tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 2. The retail merchant, acting as an agent for the state of Indiana, must collect the tax. The tax is bourne by the customer. Consideration is a necessary element of taxable transaction. *(Department of State Revenue; Ch. 2, Reg. 6-2.5-2-1(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 9)*

45 IAC 2.2-2-3 Tax rate

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 3. The state gross retail tax is measured by the gross retail income received by a retail merchant in a retail unitary

transaction and is imposed at the following rates:

STATE GROSS RETAIL TAX	GROSS RETAIL INCOME RECEIVED FROM THE RETAIL UNITARY TRANSACTION
$.0	less than $.10
$.01	at least $ .10, but less than $.30
$.02	at least $ .30, but less than $.50
$.03	at least $ .50, but less than $.70
$.04	at least $ .70, but less than $.90
$.05	at least $ .90, but less than $1.10

On a retail unitary transaction in which the gross retail income received by the retail merchant is one dollar and ten cents ($1.10) or more, the state gross retail tax is five percent (5%) of that gross retail income. *(Department of State Revenue; Ch. 2, Reg. 6-2.5-2-2(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 9; filed Aug 6, 1987, 4:30 pm: 10 IR 2611)*

45 IAC 2.2-2-4 Retail transactions less than 10 cents

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 4. (a) No gross retail tax is imposed when the gross retail income is less than 10 cents from a retail unitary transaction. Items of 1 cent to 9 cents purchased or paid for at one time are not exempt if the total sale or sales is more than 9 cents.

(b) Registered retail merchants recording and accounting for such sales (i.e. unitary sales of nine cents (9¢) or less) separately may deduct the amount of such sales as provided on line "D" of the sales tax reporting form ST-103.

(c) When record keeping and recording procedures are such that it would not be practical or feasible to maintain actual records of unitary transactions of one cent (1¢) to nine cents (9¢) every day in the year the department will accept the following procedure as proof of such transactions.

(d) The retail merchant may determine the ratio of 1¢ to 9¢ sales to total sales from the actual records of sales during a period of fifteen consecutive days during the first quarter of the calendar year. These days must be representative of the merchant's normal and customary sales activity throughout the year.

(e) If a merchant has multiple selling locations or different kinds of selling transactions, the merchant may apply in advance to the Indiana department of revenue for permission to use a "representative sampling of locations" at which such checks are to be made. Sufficient information to establish the fact that such locations will be "representative" of all locations will be required.

(f) The merchant using the sampling method must keep an accurate record of the dollar amount of unitary transactions under ten cents (10¢) during this fifteen day period. By dividing this total amount of gross sales at the locations used for the fifteen day period a percentage can be determined which the merchant may apply against gross sales to establish "sales not subject to the tax". This percentage factor is used throughout the balance of the calendar year in which the sampling is made.

–EXAMPLE–

(1) Gross sales for 15 consecutive days during first quarter	$2,500
(2) Sales of 1¢ to 10¢ during the same period 150 divided by 2500 or (Item 150 "2" divided by item "1")	6%

Accordingly, the merchant would deduct 6% of gross receipts as nontaxable 1¢ to 9¢ sales on line "D" of his sales and use tax reporting form ST-103.

(g) It is important that the percentage factor be arrived at from the merchant's actual records. These records must be maintained for four (4) years because the merchant will be required to substantiate the percentage factor used upon the request of the department. *(Department of State Revenue; Ch. 2, Reg. 6-2.5-2-2(a)(020); filed Dec 1, 1982, 10:35 am: 6 IR 9; filed Aug 6, 1987, 4:30 pm: 10 IR 2611)*

45 IAC 2.2-2-5 Fractions rounded to next additional cent
Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 5. If the tax, computed under Reg. 6-2.5-2-2(a)(010) *[45 IAC 2.2-2-3]*, results in a fraction of one-half cent ($.005) or more, the amount of the tax shall be rounded to the next additional cent. *(Department of State Revenue; Ch. 2, Reg. 6-2.5-2-2(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 10)*

Rule 3. Use Tax

45 IAC 2.2-3-1 Use defined
Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 1. Regulatory definition of "use" is used synonymously with the Act *[IC 6-2.5]*. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-1(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 10)*

45 IAC 2.2-3-2 Storage defined
Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 2. Regulatory definition of "storage" is used synonymously with the Act *[IC 6-2.5]*. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-1(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 10)*

45 IAC 2.2-3-3 Retail merchant engaged in business in Indiana defined
Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 3. A retail merchant engaged in business in Indiana shall include:
(1) Any retail merchant engaged in selling at retail for use, storage, or consumption in Indiana and maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, and office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business in Indiana.
(2) Any retail merchant engaged in selling at retail for use, storage, or consumption in Indiana and having any representative, agent, salesman, canvasser or solicitor operating in Indiana under the authority of the retail merchant or its subsidiary for the purpose of selling, delivering, or taking orders for the sale of any tangible personal property for use, storage, or consumption in Indiana.
(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-1(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 10)

45 IAC 2.2-3-4 Use tax; imposition
Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 4. Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-2(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 10)*

45 IAC 2.2-3-5 Use tax; motor vehicles
Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 5. (a) For purposes of the state gross retail tax and use tax, transactions representing isolated or occasional sales of

vehicles required to be licensed by the state for highway use in Indiana shall constitute retail transactions under the provisions of this section. Every sale by a resident or nonresident person who is not a retail merchant as defined in this act of a vehicle required to be licensed by the state for highway use in Indiana shall be deemed a retail transaction and the use of such vehicle shall be subject to the use tax which shall be paid by the purchaser to the Bureau of Motor Vehicles at the time of the licensing of the vehicle by the purchaser.

(b) The sale of any vehicle required to be licensed by the state for highway use in Indiana shall constitute selling at retail and shall be subject to the sales or use tax unless such purchaser is entitled to one or more of the exemptions as provided on form ST-108.

(c) If the vehicle is purchased from a registered Indiana motor vehicle dealer, the dealer must collect the tax and provide the purchaser a completed form ST-108 showing that the tax has been paid to him; or if the purchaser claims exemption and no tax is collected by the dealer, the certificate at the bottom of form ST-108 must be completed and signed by the purchaser. Title applications on sales by registered dealers without a form ST-108, completed by the dealer, will not be accepted. The ST-108 must be attached to the revenue copy of the title application (TA) by the license branch. Whenever a purchaser claims exemption on the reverse side of form ST-108, the dealer must retain a completed exemption certificate.

(d) On any vehicle which is not purchased from a registered Indiana dealer, the license branch must collect the use tax at the time of registration unless the purchaser is entitled to claim exemption from the tax for one of the reasons shown on the reverse side of the form ST-108. When the tax is collected by the license branch, a person will be required to have an affidavit signed under penalty of perjury by the seller that contains the actual selling price of the vehicle. However, in absence of an affidavit the buyer will be charged on the average selling price for that vehicle, as determined under a used vehicle guide. The affidavit would be attached to the title instead of an ST-108 in the situation above; however, in the absence of the affidavit the amount of the selling price, trade-in, and the amount subject to the use tax must be noted on the title application (TA) by the license branch.

(e) If the purchaser claims exemption on a vehicle not purchased from a registered dealer, the ST-108 must be completed by the customer or the license branch and attached to the revenue copy of the title application (TA) by the license branch. The ST-108 must show the specific paragraph under which the exemption is claimed, and be signed at the bottom of the form by the purchaser.

(f) Exemptions from the sales tax will not be allowed except for the reasons listed on the reverse side of the revised form ST-108.

(g) The dealer or license branch must collect sales tax in the usual manner from any purchaser claiming exemption from the sales tax for a reason other than those shown on the ST-108. The purchaser may apply for a refund of this tax from the Indiana Department of Revenue, Sales Tax Division.

(h) The deduction for trade-in allowance applies only to vehicles traded-in and does not apply to other property, either personal or real, which is traded on a vehicle.

(i) The assumption by the purchaser of an installment contract or other obligation on a vehicle is subject to the tax on the amount of the obligation plus any other consideration given. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-2(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 10)*

45 IAC 2.2-3-6 Use tax; aircraft, watercraft

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 6. (a)(1) The term "aircraft" will include "any device which is designed to provide air transportation for one (1) or more individuals or for cargo."

(2) The term "watercraft" will include a contrivance used or designed for navigation on water, including a vessel, boat, motor vessel, steam vessel, sailboat, vessel operated by machinery either permanently or temporarily affixed, scow, tugboat, or any marine equipment that is capable of carrying passengers, except a ferry.

(b) For the purpose of the state gross retail and use tax:

(1) The sale of aircraft by any person licensed as an aircraft dealer in Indiana has been, and will continue to be, a retail sale. Transactions representing isolated or occasional sales of aircraft required to be licensed by the state for use in Indiana shall constitute retail transactions under the provisions of this section. Every sale by a resident or nonresident person who is not a retail merchant as defined in the Indiana gross retail tax act *[IC 6-2.5]* of an aircraft required to be licensed by the state for use in Indiana shall be deemed a retail transaction, and the use of such aircraft shall be subject to the use tax which shall be paid by the purchaser to the aeronautics division of the department of transportation at the time of the licensing of the aircraft

by the purchaser.

(2) The sale of watercraft by any person licensed as a watercraft dealer in Indiana has been, and will continue to be, a retail sale. Transactions representing isolated or occasional sales of watercraft required to be licensed by the state for use in Indiana shall constitute retail transactions under the provisions of this section. Every sale by a resident or nonresident person who is not a retail merchant as defined in the Indiana gross retail tax act *[IC 6-2.5]* of a watercraft required to be licensed by the state for use in Indiana shall be deemed a retail transaction, and the use of such watercraft shall be subject to the use tax which shall be paid by the purchaser to the division of natural resources at the time of the licensing of the watercraft by the purchaser.

(c)(1) Persons licensed as aircraft dealers in Indiana will collect sales tax on their sales of aircraft and will record the selling price of the aircraft and the amount of sales tax collected on sales tax form ST-108AC. Form ST-108AC will be used by the purchaser as proof of payment of sales tax when registering the aircraft in Indiana. If the aircraft is purchased from any person other than an aircraft dealer licensed in Indiana, the purchaser must pay all sales or use tax due to the aeronautics division of the department of transportation at the time the aircraft is first registered in Indiana by the purchaser.

(2) Persons licensed as watercraft dealers in Indiana will collect sales tax on their sales of watercraft and will record the selling price of the watercraft and the amount of sales tax collected on sales tax form ST-108WC. Form ST-108WC will be used by the purchaser as proof of payment of sales tax when registering the watercraft in Indiana. If the watercraft is purchased from any person other than a watercraft dealer licensed in Indiana, the purchaser must pay all sales or use tax due to the division of natural resources at the time the watercraft is first registered in Indiana by the purchaser.

(d)(1) If the aircraft has been registered previously in Indiana, the seller must assign certificate of ownership to the purchaser showing the selling price, trade-in, description, and price. If the aircraft has not been previously registered in Indiana, the seller must furnish a bill of sale, signed by the seller, showing the make, model, year, selling price, and trade-in on the aircraft. At the time of registration, the purchaser must furnish the aeronautics division of the department of transportation with either the properly assigned certificate of ownership or bill of sale.

(2) If the watercraft has been registered previously in Indiana, the seller must assign certificate of ownership to the purchaser showing the selling price, trade-in, description, and price. If the watercraft has not been previously registered in Indiana, the seller must furnish a bill of sale, signed by the seller, showing the make, model, year, selling price, and trade-in on the watercraft. At the time of registration, the purchaser must furnish the division of natural resources with either the properly assigned certificate of ownership or bill of sale.

(e) Only the trade-in value of an aircraft for another aircraft, or the trade-in value of a watercraft for another watercraft, may be deducted from the selling price for sales tax purposes.

(f) Aircraft which are purchased to be taken immediately to another state for registration in that state, and not for registration or use in Indiana, are not subject to the Indiana sales tax. The purchaser must furnish the seller with exemption certificate ST-136AC, in triplicate. The seller is required to keep one copy for his files. Two copies of the exemption certificate must be certified by the dealer and forwarded to the sales tax division of the Indiana department of revenue. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-2(b)(020); filed Dec 1, 1982, 10:35 am: 6 IR 11; filed Aug 6, 1987, 4:30 pm: 10 IR 2612)*

45 IAC 2.2-3-7 Definitions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 7. (a) Contractors. For purposes of this regulation *[45 IAC 2.2]* "contractor" means any person engaged in converting construction material into realty. The term "contractor" refers to general or prime contractors, subcontractors, and specialty contractors, including but not limited to persons engaged in building, cement work, carpentry, plumbing, heating, electrical work, roofing, wrecking, excavating, plastering, tile and road construction.

(b) Construction material. For purposes of this regulation *[45 IAC 2.2]*, "construction material" means any tangible personal property to be used for incorporation in or improvement of a facility or structure constituting or becoming part of the land on which such facility or structure is situated.

(c) Machinery, tools, equipment and supplies used by a contractor to perform a construction contract are not construction materials. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-2(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 12)*

45 IAC 2.2-3-8 Tangible personal property sold for incorporation into real property

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 8. (a) In general, all sales of tangible personal property are taxable, and all sales of real property are not taxable. The conversion of tangible personal property into realty does not relieve the taxpayer from a liability for any owing and unpaid state gross retail tax or use tax with respect to such tangible personal property.

(b) All construction material purchased by a contractor is taxable either at the time of purchase, or if purchased exempt (or otherwise acquired exempt) upon disposition unless the ultimate recipient could have purchased it exempt (see 6-2.5-5 *[45 IAC 2.2-5]*). *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-2(c)(020); filed Dec 1, 1982, 10:35 am: 6 IR 12)*

45 IAC 2.2-3-9 Procedure when tax is not paid on construction material when purchased by the contractor

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 9. (a) A contractor may purchase construction material exempt from the state gross retail tax only if he issues either an exemption certificate or a direct pay certificate to the seller at the time of purchase.

(b) A contractor who purchases construction material exempt from the state gross retail tax or otherwise acquires construction material "tax-free", is accountable to the Department of Revenue for the state gross retail tax when he disposes of such property.

(c) A contractor has the burden of proof to establish exempt sale or use when construction material, which was acquired tax-free, is not subject to either the state gross retail or use tax upon disposition.

(d) Disposition subject to the state gross retail tax. A contractor-retail merchant has the responsibility to collect the state gross retail tax and to remit such tax to the Department of Revenue whenever he disposes of any construction material in the following manner:

(1) Time and material contract. He converts the construction material into realty on land he does not own and states separately the cost for the construction material and the cost for the labor and other charges (only the gross proceeds from the sale of the construction materials are subject to tax), or

(2) Construction material sold over-the-counter. Over the counter sales of construction materials will be treated as exempt from the state gross retail tax only if the contractor receives a valid exemption certificate issued by the person for whom the construction is being performed or by the customer who purchases over-the-counter, or a direct pay permit issued by the customer who purchases over-the-counter.

(e) Disposition subject to the use tax. With respect to construction materials a contractor acquired tax-free, the contractor is liable for the use tax and must remit such tax (measured on the purchase price) to the Department of Revenue when he disposes of such property in the following manner:

(1) He converts the construction material into realty on land he owns and then sells the improved real estate;

(2) He utilizes the construction material for his own benefit; or

(3) Lump sum contract. He converts the construction material into realty on land he does not own pursuant to a contract that includes all elements of cost in the total contract price.

(f) A disposition under C. *[subsection (e)(3) of this section]* will be exempt from the use tax only if the contractor received a valid exemption certificate, not a direct pay permit, from the ultimate purchaser or recipient of the construction material (as converted), provided such person could have initially purchased such property exempt from the state gross retail tax. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-2(c)(030); filed Dec 1, 1982, 10:35 am: 6 IR 12)*

45 IAC 2.2-3-10 Procedure when tax paid on construction material when purchased by contractor

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 10. A contractor has no further liability for either the state gross retail tax or use tax with respect to construction material acquired by the contractor in a taxable transaction, provided the contractor disposes of such property in the following manner:

(1) He converts the construction material into realty on land he owns and then sells the improved real estate;

(2) He utilizes the construction material for his own benefit and does not resell or transfer such property to others; or

(3) Lump sum contract. He converts the construction material into realty on land he does not own pursuant to a contract that includes all elements of cost in the total contract price.

(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-2(c)(040); filed Dec 1, 1982, 10:35 am: 6 IR 13)

45 IAC 2.2-3-11 Procedure when construction material not furnished by contractor

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 11. (a) A contractor is not liable for either the state gross retail tax or use tax when he converts construction material into realty on land he does not own, provided such property is furnished by the customer of the contractor.

(b) When the customer furnished the construction materials, the customer is deemed to be the user of such property and, as such, he is accountable to the Department of Revenue for any taxes owing and unpaid with respect to such construction material.

(c) A contractor may function as a retail merchant (having all duties and responsibility as such) with respect to construction material, and then function as an installer or "converter" of such property which will be treated as having been furnished by the customer.

(d) If a contractor functions as both retail merchant and an installer with respect to construction materials and the over-the-counter sales price of such property is less than fair market value, any consideration received by the contractor for installing or "converting" such property will be treated as part of the over-the-counter sales price subject to the state gross retail tax. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-2(c)(050); filed Dec 1, 1982, 10:35 am: 6 IR 13)*

45 IAC 2.2-3-12 Contractors

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 12. (a) Tangible personal property purchased to become a part of an improvement to real estate under a contract with an organization entitled to exemption is eligible for exemption when purchased by the contractor.

(b) In order to be exempt on such purchases, the contractor must be registered as a retail merchant, must obtain an exemption certificate from the exempt organization, and must issue an exemption certificate to his supplier.

(c) Utilities, machinery, tools, forms, supplies, equipment, or any other items used or consumed by the contractor and which do not become a part of the improvement to real estate are not exempt regardless of the exempt status of the person for whom the contract is performed.

(d) A person making a contract for the improvement to real estate whereby the material becoming a part of the improvement and the labor are quoted as one price is liable for the payment of sales tax on the purchaser *[sic.]* price of all material so used.

(e) A person selling tangible personal property to be used as an improvement to real estate may enter into a completely separate contract to furnish the labor to install or construct such improvement, in which case the sales tax shall be collected and remitted by such seller on the materials sold for this purpose. Such sale of materials must be identifiable as a separate transaction from the contract for labor. The fact that the seller subsequently furnished information regarding the charges for labor and material used under a flat bid quotation shall not be considered to constitute separate transactions for labor and material. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-2(c)(060); filed Dec 1, 1982, 10:35 am: 6 IR 13)*

45 IAC 2.2-3-13 Tax rate; use tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 13. Tangible personal property, purchased in Indiana or elsewhere in a retail transaction from a retail merchant, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax measured by the gross retail income received from such property, unless the Indiana state gross retail tax has been collected at the point of purchase. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-3(010); filed Dec 1, 1982, 10:35 am: 6 IR 14)*

45 IAC 2.2-3-14 Exemption from use tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-3; IC 6-2.5-5-24

Sec. 14. The use tax does not apply to the following:

(1) Storage, use, or other consumption in Indiana of tangible personal property sold in a transaction on which the gross retail tax has been paid.

(2) Storage, use, or other consumption in Indiana of tangible personal property sold in a transaction exempt from gross retail tax under any part of IC 6-2.5-5, except IC 6.2.5-5-24(b) *[sic.]*. Therefore, as provided by IC 6-2.5-5-24(a), the exemption from use tax would extend to transactions described in IC 6-2.1-3-2, IC 6-2.1-3-5, IC 6-2.1-3-6, IC 6-2.1-3-7, and IC 6-2.1-3-13. Such items include:

(A) Gross income derived from sales to the United States government, but only to the extent to which the state of Indiana is prohibited from taxing such gross income by the constitution of the United States.

(B) Taxes received or collected by the taxpayer as agent for the state of Indiana and/or the United States of America. (This exemption is limited only to taxpayers explicitly designated as a collection agent in the statute under the terms of which tax is imposed.)

(C) Retailers' excise taxes imposed by the United States solely on the sale at retail of tangible personal property and collected by a retail merchant as a separate item in addition to the price of the property sold, and which is remitted by such retail merchant to the taxing authority. "Retailers' excise taxes imposed by the United States" includes manufacturer excise tax imposed by the United States on motor vehicle bodies and chassis, parts, and accessories therefore, tires, tubes for tires, tread rubber and laminated tires, provided that such tax is separately stated by the seller.

(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-4(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 14)

45 IAC 2.2-3-15 Liability for tax following nonexempt use after exemption certificate issued

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 15. If any person who issues an exemption certificate in respect to the state gross retail tax or use tax and thereafter makes any use of the tangible personal property covered by such certificate, or in any way consumes, stores, or sells such tangible personal property, where such use, consumption, storage or sale is in a manner which is not permitted by such exemption, such use, consumption, or storage shall become subject to the use tax (or such sale shall become subject to the gross retail tax), and such person shall become liable for the tax or gross retail tax due thereon. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-4(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 14)*

45 IAC 2.2-3-16 Credits for taxes paid to other states

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 16. Liability for Indiana use tax shall be reduced by a credit for the amount of any sale, purchase, or use tax paid to any other state, territory or possession of the United States with respect to the tangible personal property on which Indiana use tax applies. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-5(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 14)*

45 IAC 2.2-3-17 Credits; exceptions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 17. No credit described in 6-2.5-3-5(a)(010) *[45 IAC 2.2-3-16]* shall be available for the use tax imposed on the use, storage, or consumption of vehicles licensed by Indiana for use on Indiana highways, nor for aircraft or watercraft registered by Indiana for use in Indiana. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-5(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 14; filed Aug 6, 1987, 4:30 pm: 10 IR 2613)*

45 IAC 2.2-3-18 Personal liability
Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 18. Liability for Indiana use tax shall apply with respect to storage, use, or consumption of tangible personal property in Indiana, and the person who stores, uses, or consumes such property shall be personally liable for such use tax. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-6(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 14)*

45 IAC 2.2-3-19 Collection of use tax
Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 19. (a) The use tax shall be paid by the purchaser to the retail merchant, who shall collect the tax as agent for the state of Indiana.

(b) Retail merchants who must collect use tax as agent for the purchaser are:

(1) Any retail merchant engaged in selling at retail for use, storage, or consumption in Indiana and maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business in Indiana.

(2) Any retail merchant engaged in selling at retail for use, storage, or consumption in Indiana and having any representative, agent, saleman, canvasser or solicitor operating in Indiana under the authority of the retail merchant or its subsidiary for the purpose of selling, delivering, or taking orders for the sale of any tangible personal property for use, storage, or consumption in Indiana.

(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-6(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 14)

45 IAC 2.2-3-20 Merchandise accepted in Indiana; collection of use tax
Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 20. All purchases of tangible personal property which are delivered to the purchaser for storage, use, or consumption in the state of Indiana are subject to the use tax. The use tax must be collected by the seller if he is a retail merchant described in Reg. 6-2.5-3-6(b)(010) *[45 IAC 2.2-3-19]* or if he has Departmental permission to collect the tax. If the seller is not required to collect the tax or fails to collect the tax when required to do so, the purchaser must remit the use tax directly to the Indiana Department of Revenue. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-6(b)(020); filed Dec 1, 1982, 10:35 am: 6 IR 15)*

45 IAC 2.2-3-21 Merchandise accepted outside Indiana; collection of use tax
Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 21. All purchases of tangible personal property which are accepted by the purchaser outside the state of Indiana but which are stored, used, or otherwise consumed in Indiana are subject to the use tax. The use tax must be remitted directly to the Indiana Department of Revenue by the Indiana purchaser. (See 6-2.5-3-5(b)(010) *[45 IAC 2.2-3-20]*.) *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-6(b)(030); filed Dec 1, 1982, 10:35 am: 6 IR 15)*

45 IAC 2.2-3-22 Motor vehicles; collection of use tax
Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 22. No vehicle shall be licensed by Indiana for highway use in Indiana unless the registered owner thereof shall present to the licensing agency at the time such vehicle is first licensed in his name proper evidence, as prescribed by the Department, of the payment of the state gross retail tax or use tax owing in respect to his acquisition of ownership of such vehicle, or shall then pay to such agency upon forms and receipts prescribed by the Department, the amount of any such tax owing and unpaid on the purchase

of such vehicle. (See 6-2.5-3-2(b) *[45 IAC 2.2-3-5 and 45 IAC 2.2-3-6]*.) *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-6(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 15)*

45 IAC 2.2-3-23 Aircraft, watercraft; collection of use tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 23. No aircraft or watercraft shall be registered by Indiana for use in Indiana unless the registered owner thereof shall present to the registering agency at the time such aircraft or watercraft is first registered in his name, proper evidence, as prescribed by the department, of the payment of the state gross retail tax or use tax owing in respect to his acquisition of ownership of such aircraft or watercraft, or shall then pay to such agency upon forms and receipts prescribed by the department, the amount of any such tax owing and unpaid on the purchase of such aircraft or watercraft. (See 6-2.5-3-2(b)(020) *[45 IAC 2.2-3-6]*.) *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-6(c)(020); filed Dec 1, 1982, 10:35 am: 6 IR 15; filed Aug 6, 1987, 4:30 pm: 10 IR 2613)*

45 IAC 2.2-3-24 Presumption of purchase for use

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 24. All sales of tangible personal property by a retail merchant for delivery in Indiana shall be presumed to be retail transactions for storage, use, or consumption in Indiana. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-7(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 15)*

45 IAC 2.2-3-25 Presumption of purchase for use; burden of proof

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 25. The burden of proving the contrary is upon the purchaser. The retail merchant making such a sale shall bear the burden of proving to the contrary also, unless he receives from the purchaser an exemption certificate. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-7(a)(020); filed Dec 1, 1982, 10:35 am: 6 IR 15)*

45 IAC 2.2-3-26 Collection of use tax; receipt

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 26. If requested by the purchaser, the retail merchant shall give such purchaser a receipt for collection of the use tax. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-8(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 16)*

45 IAC 2.2-3-27 Documentation; use tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 27. The person who stores, uses or consumes tangible personal property in Indiana may avoid paying the use tax to the Department if such person retains for inspection by the Indiana Department of Revenue a receipt evidencing payment of the tax. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-8(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 16)*

Rule 4. Retail Transactions of Retail Merchant

45 IAC 2.2-4-1 Selling at retail; application

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 1. (a) Where ownership of tangible personal property is transferred for a consideration, it will be considered a transaction of a retail merchant constituting selling at retail unless the seller is not acting as a "retail merchant".

(b) All elements of consideration are included in gross retail income subject to tax. Elements of consideration include, but are not limited to:

(1) The price arrived at between purchaser and seller.

(2) Any additional bona fide charges added to or included in such price for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other services performed in respect to or labor charges for work done with respect to such property prior to transfer.

(3) No deduction from gross receipts is permitted for services performed or work done on behalf of the seller prior to transfer of such property at retail.

(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-1(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 16)

45 IAC 2.2-4-2 Selling at retail; services

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 2. (a) Professional services, personal services, and services in respect to property not owned by the person rendering such services are not "transactions of a retail merchant constituting selling at retail", and are not subject to gross retail tax. Where, in conjunction with rendering professional services, personal services, or other services, the serviceman also transfers tangible personal property for a consideration, this will constitute a transaction of a retail merchant constituting selling at retail unless:

(1) The serviceman is in an occupation which primarily furnishes and sells services, as distinguished from tangible personal property;

(2) The tangible personal property purchased is used or consumed as a necessary incident to the service;

(3) The price charged for tangible personal property is inconsequential (not to exceed 10%) compared with the service charge; and

(4) The serviceman pays gross retail tax or use tax upon the tangible personal property at the time of acquisition.

(b) Services performed or work done in respect to property and performed prior to delivery to be sold by a retail merchant must however, be included in taxable gross receipts of the retail merchant.

(c) Persons engaging in repair services are servicemen with respect to the services which they render and retail merchants at retail with respect to repair or replacement parts sold.

(d) A serviceman occupationally engaged in rendering professional, personal or other services will be presumed to be a retail merchant selling at retail with respect to any tangible personal property sold by him, whether or not the tangible personal property is sold in the course of rendering such services. If, however, the transaction satisfies the four (4) requirements set forth in 6-2.5-4-1(c)(010), paragraph (1) *[subsection (a) of this section]*, the gross retail tax shall not apply to such transaction. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-1(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 16)*

45 IAC 2.2-4-3 Selling at retail; delivery charges

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-3-3; IC 6-2.5

Sec. 3. (a) Separately stated delivery charges are considered part of selling at retail and subject to sales and use tax if the delivery is made by or on behalf of the seller of property not owned by the buyer.

(b) The following guidelines have been developed:

(1) Delivery charge separately stated with F.O.B. destination–taxable.

(2) Delivery charge separately stated with F.O.B. origin–non taxable.

(3) Delivery charge separately stated where no F.O.B. has been established–non taxable.

(4) Delivery charges included in the purchase price are taxable.

(c) Two considerations must always be kept in mind in applying these guidelines:

(1) The rules do not override established interstate commerce exemptions recognized by IC 6-2.1-3-3 (see 6-2.5-5-24(b)(010) *[45 IAC 2.2-5-54]*).

(2) The rules are only applicable in determining whether or not the delivery charge of an otherwise taxable sale is also subject

to sales or use tax.

(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-1(e)(010); filed Dec 1, 1982, 10:35 am: 6 IR 16; filed Aug 6, 1987, 4:30 pm: 10 IR 2613)

45 IAC 2.2-4-4 Wholesale sales

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 4. The term "wholesale sales" includes an *[sic.]* is limited to the following:

(1) Sales of tangible personal property, except capital or depreciable assets, to a purchaser for resale in the form in which it was purchased.

(2) Sales of tangible personal property for its direct consumption in direct production by a purchaser in the business of producing tangible personal property by manufacturing, processing, refining, repairing, mining, agriculture or horticulture. "Consumed" as used in this regulation *[45 IAC 2.2]* means the dissipation or expenditure by combustion, use or application, and does not mean or include the obsolescence, discarding, disuse, depreciation, damage, wear or breakage of tools, dies, equipment, machinery, or furnishings.

(3) Sales of tangible personal property to be incorporated as material and integral part of tangible personal property produced by the purchaser in the business of manufacturing, assembly, construction, refining or processing.

(4) Sales of drugs, medicine, dental preparations and like materials to be directly consumed in professional use by doctors, dentists, embalmers, hospitals, barber shops, etc.

(5) Sales of tangible personal property for direct consumption by the purchaser in industrial cleaning.

(6) Sales of tangible personal property for direct consumption by the purchaser directly in the business of rendering public utility services.

(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-2(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 17)

45 IAC 2.2-4-5 Wholesale sales; exceptions from retail transactions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 5. Notwithstanding Regulation 6-2.5-4-2(b)(010) *[45 IAC 2.2-4-4]*, retail transaction does not include receipts from industrial servicing or processing of tangible personal property owned by another and which is to be sold by him as either a completed article or a material part thereof, or as an integral or component part of tangible personal property produced for sale by him as part of the business of manufacturing, assembly, construction, refining or processing. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-2(b)(020); filed Dec 1, 1982, 10:35 am: 6 IR 17)*

45 IAC 2.2-4-6 Retail transactions; soft water and water conditioning

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 6. (a) Water conditioning companies (including all soft water companies) are retail merchants making retail transactions with respect to all tangible personal property sold, leased, or rented by them and must collect the sales tax on all such property unless the purchaser or user is entitled to claim exemption from the sales tax and furnished a properly completed exemption certificate.

(b) For purposes of collection of the tax, the term "water conditioner" shall include all automatic softeners, softener tanks, exchange tanks, purifiers, chlorinators, or any other device or equipment, together with the minerals contained therein used to condition, purify or soften water.

(c) Rented or leased water conditioners, including those leased with an option for purchase, or those otherwise furnished for a monthly or other periodic charge are subject to the sales tax on the amount charged. Such conditioners subsequently sold after July 1, 1969, shall be subject to the tax on the full selling price. The tax is also due on any payment required to exercise the option.

(d) Purchases by a water conditioning company of water conditioners, tanks and other equipment to be subsequently sold or rented are not subject to the sales tax.

(e) Purchases of all other equipment, supplies, and materials not for resale, including salt or any other cleaning agent used

to rejuvenate water tanks or the minerals therein, are subject to the sales tax. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-3(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 17)*

45 IAC 2.2-4-7 Retail transactions; soft water and water conditioning plumbing services

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 7. When a customer is billed separately for materials used to alter or change plumbing to accommodate conditioning equipment, the sales tax shall be charged on such materials. If materials used in an installation are not billed as a separate item to the customer, the company shall then be liable for the use tax thereon. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-3(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 17)*

45 IAC 2.2-4-8 Accommodations furnished for less than 30 days

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 8. (a) For the purpose of the state gross retail tax and use tax: Every person engaged in the business of renting or furnishing for periods of less than thirty (30) days any accommodation including booths, display spaces and banquet facilities, in any place where accommodations are regularly furnished for a consideration is a retail merchant making retail transactions in respect thereto and the gross income received therefrom shall constitute gross retail income from retail unitary transactions.

(b) In general, the gross receipts from renting or furnishing accommodations are taxable. An accommodation which is rented for a period of thirty (30) days or more is not subject to the gross retail tax.

(c) There is no exemption for purchases made by persons who are engaged in renting or furnishing accommodations. Such persons are deemed to purchase or otherwise acquire tangible personal property for use or consumption in the regular course of their business.

(d) The renting or furnishing of an accommodation for less than thirty (30) days constitutes a retail merchant making a retail transaction. Every person so engaged must collect the gross retail tax on the gross receipts from such transactions. The tax is borne by the person or organization who uses the accommodation.

(e) The tax is imposed on the gross receipts from "furnishing" an accommodation. The gross receipts subject to tax include the amount which represents consideration for the rendition of those services which are essential to the furnishing of the accommodation, and those services which are regularly provided in furnishing the accommodation. Such amounts are subject to tax even when they are separately itemized on the statement or invoice.

(f) The tax is imposed on the gross receipts from accommodations which are furnished for periods of less than thirty (30) days. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-4(010); filed Dec 1, 1982, 10:35 am: 6 IR 18)*

45 IAC 2.2-4-9 Accommodation defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 9. (a) For purposes of the state gross retail and use tax, an "accommodation" is any space, facility, structure, or combination thereof including booths, display spaces and banquet facilities, together with all associated personal or real property (including land), which is intended for occupancy by human beings for a period less than thirty (30) days including:

(1) Rooms in hotels, motels, lodges, ranches, villas, apartments or houses.

(2) Gymnasiums, coliseums, banquet halls, ballrooms, or arenas, and other similar accommodations requlary *[sic.]* offered for rent.

(3) Cabins or cottages.

(4) Tents or trailers (when situated in place).

(5) Spaces in camper parks and trailer parks wherein spaces are regularly offered for rent for periods of less than thirty (30) days.

(6) Rooms used for banquets, weddings, meetings, sales displays, conventions or exhibits.

(7) Booths or display spaces in a building, coliseum or hall.

(b) The tax does not apply to rental of meeting rooms to charitable or other exempt organizations to be used in the furtherance of the purpose for which they are granted exemption.

–EXAMPLE–

If a person moves into a room for an indefinite period, but pays weekly, sales tax must be collected until a person has rented the room for longer than 30 consecutive days.

(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-4(020); filed Dec 1, 1982, 10:35 am: 6 IR 18)

45 IAC 2.2-4-10 Power subsidiary

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 10. Regulatory definition of "power subsidiary" is used synonymously with the Act *[IC 6-2.5]*. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-5(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 18)*

45 IAC 2.2-4-11 Power subsidiary; retail transaction

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 11. (a) In general, the furnishing of electricity, gas, water, steam or steam heating services by public utilities to consumers is subject to the state gross retail tax.

(b) A power subsidiary or a person engaged as a public utility in furnishing or selling electrical energy, natural or artificial gas or mixtures thereof, water, or steam or steam heating services to a person for domestic or commercial consumption shall be a retail merchant in respect thereto, and the gross income received therefrom, shall constitute gross retail income of a retail merchant received from a retail transaction.

(c) The gross receipts of power subsidiaries on public utilities from the furnishing or selling of gas, electricity, water, or steam are subject to the state gross retail tax. The tax applies to the total receipts of such power subsidiary or public utilities for services furnished or sold, irrespective of whether the actual net charge is based upon actual consumption, a flat rate charge, or a minimum charge. The tax is borne by the consumers.

(d) The term "public utilities" as used in this regulation *[45 IAC 2.2]* means any organization which is engaged in the furnishing or selling of electricity, natural or artificial gas or mixtures thereof, water, steam or steam heating, and having the right of eminent domain or subject to government regulation in connection with the furnishing of public utility services. The term includes governmental units and not-for-profit organizations which furnish public utility services. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-5(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 18)*

45 IAC 2.2-4-12 Power subsidiary; installation or removal of equipment not subject to the gross retail tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 12. (a) In general, the furnishing of electricity, gas, water, steam or steam heating services by public utilities to consumers is subject to the gross retail tax.

(b) The gross receipts of a power subsidiary or person engaged as a public utility in selling electrical energy, gas, water, or steam to consumers derived from the provision, installation, construction, servicing, or removal of tangible personal property used in connection with the furnishing of any such public utility service or commodity shall not constitute gross retail income of a retail merchant received from a retail transaction.

(c) The gross receipts of power subsidiaires *[sic.]* or public utilities engaged in furnishing electrical energy, gas, water, or steam to consumers from the provision, installation, construction, servicing, or removal of tangible personal property used to furnish such public utility services shall not constitute gross receipts of a retail merchant received from a retail transaction. The gross receipts from connect and disconnect charges, equipment charges, contributions in aid of construction charges, deferred payment charges, delinquency charges, and repair service charges are not subject to the state gross retail tax. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-5(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 19)*

45 IAC 2.2-4-13 Power subsidiary; utilities furnished to industrial consumers not subject to the gross retail tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5-4-5; IC 6-2.5-5-5.1

Sec. 13. (a) In general, the furnishing of electricity, gas, water, steam, or steam heating services by public utilities to consumers is subject to tax.

(b) The gross receipt of every person engaged as a power subsidiary or a public utility derived from selling electrical energy, gas, water, or steam to consumers for direct use in direct manufacturing, mining, production, refining, oil or mineral extraction, irrigation, agriculture, horticulture, or another public utility or power subsidiary described in IC 6-2.5-4-5 shall not constitute gross retail income of a retail merchant received from a retail transaction. Electrical energy, gas, water, or steam will only be considered directly used in direct production, manufacturing, mining, refining, oil or mineral extraction, irrigation, agriculture, or horticulture if the utilities would be exempt under IC 6-2.5-5-5.1.

(c) Sales of public utility services or commodities to consumers engaged in manufacturing, mining, production, refining, oil or mineral extraction, irrigation, agriculture, horticulture, or another public utility or power subsidiary described in IC 6-2.5-4-5, based on a single meter charge, flat rate charge, or other charge, are excepted if such services are separately metered or billed and will be used predominantly for the excepted purposes.

(d) Sales of public utility services and commodities to consumers engaged in manufacturing, mining, production, refining, oil or mineral extraction, irrigation, agriculture, or horticulture, based on a single meter charge, flat rate charge, or other charge, which will be used for both excepted and nonexcepted purposes are taxable unless such services and commodities are used predominantly for excepted purposes.

(e) Where public utility services are sold from a single meter and the services or commodities are utilized for both exempt and nonexempt uses, the entire gross receipts will be subject to tax unless the services or commodities are used predominantly for excepted purposes. Predominant use shall mean that more than fifty percent (50%) of the utility services and commodities are consumed for excepted uses. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-5(c)(020); filed Dec 1, 1982, 10:35 a.m.: 6 IR 19; filed Dec 11, 1992, 5:00 p.m.: 16 IR 1366)*

45 IAC 2.2-4-14 Local exchange telephone service or intrastate message toll telephone service

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 14. (a) In general, the furnishing of telephone services by public utilities to consumers is subject to the state gross retail tax. The gross receipts of public utilities from the furnishing of local exchange telephone service or intrastate message toll service is subject to the state gross retail tax. The tax applies to the total receipts of such public utilities for furnishing such services. The tax is borne by the consumer.

(b) Every person engaged as a public utility in the furnishing of communication service with respect to the furnishing of local exchange telephone service or intrastate message toll telephone shall be and constitute a retail merchant in respect thereto, and the gross income received therefore upon billings or statements rendered to consumers shall constitute gross retail income received from retail transactions.

(c) Local exchange intrastate telephone service. The tax is imposed on the gross receipts from charges periodically billed to consumers for the privilege of making local exchange calls to other telephones located within the local exchange telephone area. The tax applies irrespective of whether the actual net charge is based upon flat rate charge, a message charge, a minimum charge, service charge, or a membership fee.

(d) Intrastate message toll telephone service. The tax is imposed on the gross receipts from message charges periodically biled *[sic.]* to consumers for the privilege of transmitting messages, information, or intelligence between points located within Indiana where the amount of the charge is regulated by the Public Service Commission of Indiana. The tax applies to the total receipts of such service irrespective of whether the actual net charge is based upon a flat rate charge, a message charge, a minimum charge, service charge or a membership fee.

(e) The term "public utilities" as used in this regulation *[45 IAC 2.2]* means any organization which is engaged in the furnishing or selling of telephone services and having the right of eminent domain or subject to governmental regulations in connection with the furnishing of public utility services. The term includes governmental units and not-for-profit organizations which furnish public utility services. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-6(a)(010); filed Dec 1, 1982, 10:35 am:*

6 IR 20)

45 IAC 2.2-4-15 Telephone utilities; installation or removal of equipment not subject to gross retail tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 15. (a) In general, the furnishing of telephone services by public utilities is subject to gross retail tax.

(b) The gross receipts of public utilities engaged in furnishing telephone services to consumers derived from the provision, installation, construction, servicing, or removal of tangible personal property used in connection with the furnishing of such public utility service does not constitute gross retail income of a retail merchant received from a retail transaction. The gross receipts from installation charges, repair charges, deferred payment charges and delinquency charges are not subject to the state gross retail tax. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-6(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 20)*

45 IAC 2.2-4-16 Telephone utilities; utilities furnished to other customers not subject to gross retail tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5-4-5

Sec. 16. The gross receipts of every person engaged as a public utility derived from furnishing local exchange telephone service or intrastate message toll telephone service to other public utilities which furnish local exchange telephone service, intrastate message toll telephone service or intrastate telegraph service or another public utility or power subsidiary described in IC 6-2.5-4-5 shall not constitute gross retail income received from a retail transaction. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-6(b)(020); filed Dec 1, 1982, 10:35 am: 6 IR 20)*

45 IAC 2.2-4-17 Public utilities furnishing intrastate telegraph service

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 17. (a) In general, the furnishing of telegraph services by public utilities to consumers is subject to the state gross retail tax. The gross receipts of public utilities derived from the furnishing or selling of telegraph services is subject to the state gross retail tax. The tax applies to the total receipts of such public utilities for furnishing such public utility services irrespective of whether the actual net charge is based upon a message charge, a flat rate charge, a minimum charge, a service charge, or membership fee. The tax is borne by the consumers.

(b) Every person engaged as a public utility in the furnishing of intrastate telegraph service shall be and constitute a retail merchant in respect thereto, and the gross income received therefrom shall constitute gross retail income from a retail transaction.

(c) Intrastate telegraph service: The tax is imposed on a consumer for the privilege of transmitting telegrams, specific written messages, or intelligence through the use of equipment provided by the public utilities where the amount of the charge for such messages or intelligence is regulated by the Public Service Commission of Indiana. The tax applies to the total receipts of such public utilities for transmission of such messages or intelligence.

(d) The term "public utility" as used in this regulation *[45 IAC 2.2]* means any organization which is engaged in the furnishing or selling of telegraph services and having the right of eminent domain or subject to governmental regulations in connection with the furnishing of public utility services. The term includes governmental public utility services. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-7(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 20)*

45 IAC 2.2-4-18 Telegraph utilities; installation or removal of equipment not subject to gross retail tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 18. (a) In general, the furnishing of telegraph service by public utilities to consumers is subject to the gross retail tax.

(b) The gross receipts of public utilities engaged in furnishing telegraph services to consumers derived from the provision, installation, construction, servicing or removal of tangible personal property used to furnish such public utility service does not constitute gross retail income of a retail merchant received from a retail transaction. The gross receipts from connect and disconnect

charges, equipment charges, contributions in aid of construction, deferred payment charges, delinquency charges are not subject to the state gross retail tax. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-7(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 21)*

45 IAC 2.2-4-19 Telegraph utilities; utilities furnished to other utility customers not subject to the gross retail tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5-4-5

Sec. 19. The gross receipts of every person engaged as a public utility derived from the furnishing of intrastate telegraph service to other public utilities which furnish local exchange telephone service, intrastate message toll telephone service or intrastate telegraph service or another public utility or power subsidiary described in IC 6-2.5-4-5 shall not constitute gross retail income from a retail transaction. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-7(b)(020); filed Dec 1, 1982, 10:35 am: 6 IR 21)*

45 IAC 2.2-4-20 Private or proprietary activities or business; state, local governments and agencies

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 20. The state of Indiana, its agencies and instrumentalities, all counties, townships and municipal corporations, their respective agencies and instrumentalities, and all other state governmental entities and subdivisions, including state colleges and universities, shall, in the performance of private or proprietary activities or business, constitute retail merchants making retail transactions in respect to receipts which would constitute gross retail income from a retail transaction if received by a retail merchant. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-8(010); filed Dec 1, 1982, 10:35 am: 6 IR 21)*

45 IAC 2.2-4-21 Tangible personal property sold for incorporation into real property

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 21. (a) In general, all sales of tangible personal property are taxable, and all sales of real property are not taxable. The conversion of tangible personal property into realty does not relieve a liability for any owing and unpaid state gross retail tax or use tax with respect to such tangible personal property.

(b) All construction material purchased by a contractor is taxable either at the time of purchase, or if purchased exempt (or otherwise acquired exempt) upon disposition unless the ultimate recipient could have purchased it exempt (see 6-2.5-5 *[45 IAC 2.2-5]*). *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-9(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 21)*

45 IAC 2.2-4-22 Procedure when a tax is not paid on construction material when purchased by contractor

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 22. (a) A contractor may purchase construction material exempt from the state gross retail tax only if he issues either an exemption certificate or a direct pay certificate to the seller at the time of purchase.

(b) A contractor, who purchases construction material exempt from the state gross retail tax or otherwise acquires construction material "tax-free", is accountable to the Department of Revenue for the state gross retail tax when he disposes of such property unless the ultimate recipient could have purchased it exempt (see 6-2.5-5 *[45 IAC 2.2-5]*).

(c) A contractor has the burden of proof to establish exempt sale or use when construction material, which was acquired "tax-free", is not subject to either the state gross retail tax or use tax upon disposition.

(d) Disposition subject to the state gross retail tax. A contractor-retail merchant has the responsibility to collect the state gross retail tax and to remit such tax to the Department of Revenue whenever he disposes of any construction material in the following manner:

(1) Time and material contract. He converts the construction material into realty on land he does not own and states separately the cost for the construction materials and the cost for the labor and other charges (only the gross proceeds from the sale of the construction material are subject to tax); or

(2) Construction material sold over-the-counter. Over the counter sales of construction materials will be treated as exempt

from the state gross retail tax only if the contractor receives a valid exemption certificate issued by the person for whom the construction is being performed or by the customer who purchases over-the-counter, or a direct pay permit issued by the customer who purchases over-the-counter.

(e) Disposition subject to the use tax. With respect to construction material a contractor acquired tax-free, the contractor is liable for the use tax and must remit such tax (measured on the purchase price) to the Department of Revenue when he disposes of such property in the following manner:

(1) He converts the construction material into realty on land he owns and then sells the improved real estate;

(2) He utilizes the construction material for his own benefit; or

(3) Lump sum contract. He converts the construction material into realty on land he does not own pursuant to a contract that includes all elements of cost in the total contract price.

A disposition under C. *[subsection (e)(3) of this section]* will be exempt from the use tax if the contractor received a valid exemption certificate from the ultimate purchases (purchaser) or recipient of the construction material (as converted), provided such person could have initially purchased such property exempt from the state gross retail tax. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-9(a)(020); filed Dec 1, 1982, 10:35 am: 6 IR 21)*

45 IAC 2.2-4-23 Procedure when tax paid on construction material when purchased by contractor

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 23. A contractor has no further liability for either the state gross retail tax or use tax with respect to construction material acquired by the contractor in a taxable transaction, provided the contractor disposes of such property in the following manner:

(1) He converts the construction materials into realty on land he owns and then sells the improved real estate;

(2) He utilizes the construction material for his own benefit and does not resell or transfer such property to others; or

(3) Lump sum contract. He converts the construction material into realty on land he does not own pursuant to a contract that includes all elements of cost in the total contract price.

(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-9(a)(030); filed Dec 1, 1982, 10:35 am: 6 IR 22)

45 IAC 2.2-4-24 Procedure when construction material not furnished by contractor

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 24. (a) A contractor is not liable for either the state gross retail tax or use tax when he converts construction material into realty on land he does not own, provided such property is furnished by the customer of the contractor.

(b) When the customer furnishes the construction materials, the customer is deemed to be the user of such property and, as such, he is accountable to the Department of Revenue for any taxes owing and unpaid with respect to such construction material.

(c) A contractor may function as a retail merchant (having all duties and responsibilities as such) with respect to construction material, and then function as an installer or "converter" of such property which will be treated as having been furnished by the customer.

(d) If a contractor functions as both retail merchant and an installer with respect to construction materials and the over-the-counter sales price of such property is less than fair market value, any consideration received by the contractor for installing or "converting" such property will be treated as part of the over-the-counter sales price subject to the state gross retail tax. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-9(a)(040); filed Dec 1, 1982, 10:35 am: 6 IR 22)*

45 IAC 2.2-4-25 Definitions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 25. (a) Contractor. For purposes of this regulation *[45 IAC 2.2]*, "contractor" means any person engaged in converting construction material into realty. The term "contractor" refers to general or prime contractors, subcontractors, and specialty contractors, including but not limited to persons engaged in building, cement work, carpentry, plumbing, heating, electrical work, roofing, wrecking, excavating, plastering, tile and road construction.

(b) Construction material. For purposes of this regulation *[45 IAC 2.2]*, "construction material" means any tangible personal property to be used for incorporation in or improvement of a facility or structure constituting or becoming part of the land on which such facility or structure is situated.

(c) Machinery, tools, equipment and supplies used by a contractor to perform a construction contract are not construction materials. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-9(a)(050); filed Dec 1, 1982, 10:35 am: 6 IR 23)*

45 IAC 2.2-4-26 Contractors

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 26. (a) A person making a contract for the improvement to real estate whereby the material becoming a part of the improvement and the labor are quoted as one price is liable for the payment of sales tax on the purchase price of all material so used.

(b) A person selling tangible personal property to be used as an improvement to real estate may enter into a conpletely *[sic.]* separate contract to furnish the labor to install or construct such improvement, in which case the sales tax shall be collected and remitted by such seller on the materials sold for this purpose. Such sales of materials must be identifiable as a separate transaction from the contract for labor. The fact that the seller subsequently furnished information regarding the charges for labor and material used under a flat bid quotation shall not be considered to constitute separate transactions for labor and material.

(c) Tangible personal property purchased to become a part of an improvement to real estate under a contract with an organization entitled to exemption is eligible for exemption when purchased by the contractor.

(d) In order to be exempt on such purchases the contractor must be registered as a retail merchant and must obtain an exemption certificate from the exempt organization, and must issue an exemption certificate to his supplier.

(e) Utilities, machinery, tools, forms, supplies, equipment or any other items used by or consumed by the contractor and which do not become a part of the improvement to real estate are not exempt regardless of the exempt status of the person for whom the contract is performed. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-9(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 23)*

45 IAC 2.2-4-27 Tangible personal property; renting and leasing

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 27. (a) In general, the gross receipts from renting or leasing tangible personal property are taxable. This regulation *[45 IAC 2.2]* only exempts from tax those transactions which would have been exempt in an equivalent sales transaction.

(b) Every person engaged in the business of the rental or leasing of tangible personal property, other than a public utility, shall be deemed to be a retail merchant in respect thereto and such rental or leasing transaction shall constitute a retail transaction subject to the state gross retail tax on the amount of the actual receipts from such rental or leasing.

(c) In general, the gross receipts from renting or leasing tangible personal property are subject to tax. The rental or leasing of tangible personal property constitutes a retail transaction, and every lessor is a retail merchant with respect to such transactions. The lessor must collect and remit the gross retail tax or use tax on the amount of actual receipts as agent for the state of Indiana. The tax is borne by the lessee, except when the lessee is otherwise exempt from taxation.

(d) The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental of lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

(2) Rental or lease period. For purposes of the imposition of the gross retail tax or use tax on rental or leasing transactions, each period for which a rental is payable shall be considered a complete transaction. In the case of a weekly rate, each week shall be considered a complete transaction. In the case of a continuing lease or contract, with or without a definite expiration date, where rental payments are to be made monthly or on some other periodic basis, each payment period shall be considered a completed transaction.

(3) Renting or leasing property with an operator:

(A) The renting or leasing of tangible personal property, together with the services of an operator shall be subject to the tax when control of the property is exercised by the lessee. Control is exercised when the lessee has exclusive use of the property, and the lessee has the right to direct the manner of the use of the property. If these conditions are present, control is deemed to be exercised even though it is not actually exercised.

(B) The rental of tangible personal property together with an operator as part of a contract to perform a specific job in a manner to be determined by the owner of the property or the operator shall be considered the performance of a service rather than a rental or lease provided the lessee cannot exercise control over such property and operator.

(C) When tangible personal property is rented or leased together with the service of an operator, the gross retail tax or use tax is imposed on the property rentals. The tax is not imposed upon the charges for the operator's services, provided such charges are separately stated on the invoice rendered by the lessor to the lessee.

(D) Notwithstanding any other provision of this regulation *[45 IAC 2.2]* any lessee leasing or renting a vehicle(s) from any lessor, including an individual lessor, with or without operators, driver(s), or even if the operator (driver) himself is the lessor, regardless of control exercised, shall not be subject to the gross retail tax or use tax, if the leased or rented vehicle(s) are directly used in the rendering of public transportation.

(4) Supplies furnished with leased property. A person engaged in the business of renting or leasing tangible personal property is considered the consumer of supplies, fuels, and other consumables which are furnished with the property which is rented or leased.

(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-10(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 23; filed Aug 6, 1987, 4:30 pm: 10 IR 2613)

45 IAC 2.2-4-28 Tangible personal property; sales by persons engaged in renting or leasing

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 28. (a) The sale by a person of tangible personal property which is rented or leased in the regular course of such person's rental or leasing business shall be subject to the gross retail tax and use tax.

(b) In general, casual sales of tangible personal property are exempt from tax. This regulation *[45 IAC 2.2]* imposes a tax on such sales of tangible personal property subsequent to such property's use as rental property. The state gross retail tax shall apply to the gross receipts from the sale of any tangible personal property which had been rented or leased to others in the regular course of the seller's renting or leasing business. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-10(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 24)*

45 IAC 2.2-4-29 Motion picture film; rental or leasing; exclusion

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 29. In general, the rental or leasing of all tangible personal property, including microfilm, slides, video tape, tape recordings, phonograph records, etc., are taxable. The provisions applicable to the imposition of the tax on rental or leasing transactions shall not be applicable to the rental or leasing of motion picture films, audio or video tape where an admission is charged or such film or tape is used for broadcasting for home viewing or listening. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-10(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 24)*

45 IAC 2.2-4-30 Cable TV service

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 30. Every person engaged in the furnishing of local or intrastate cable television service shall be a retail merchant making retail transactions in respect to the furnishing of such service, and the gross income received therefrom, upon billings or statement rendered to consumers, shall constitute gross retail income from a retail transaction for the purposes of the gross retail tax. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-11(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 24)*

45 IAC 2.2-4-31 Cable TV service; exclusion

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 31. In general, all charges billed to the user of cable television service are subject to sales tax. This regulation *[this section]* excludes only charges billed to the consumer for the provision, installation, construction, servicing or removal of tangible personal property used in connection with the furnishing of such service. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-11(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 25)*

45 IAC 2.2-4-32 Cable TV companies; purchases

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 32. This regulation *[45 IAC 2.2]* does not exempt cable television companies from sales tax on their purchases of tangible personal property; therefore, they will be required to pay sales tax on their purchases. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-11(b)(020); filed Dec 1, 1982, 10:35 am: 6 IR 25)*

45 IAC 2.2-4-33 Auction sales; sales tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 33. Every person engaged in the business of making sales at auction of tangible personal property owned by such person or others, shall be and constitute a retail merchant making retail transactions in respect thereto and the gross income received therefrom shall constitute gross retail income of a retail merchant received from retail transactions. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-12(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 25)*

45 IAC 2.2-4-34 Auction sales; exclusion

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 34. In general, all sales of tangible personal property by any person engaged in the business of making sales at auction are taxable. This regulation *[this section]* excludes only occasional or isolated sales of tangible personal property on the premises of the owner in those instances where such tangible personal property was not acquired for resale. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-12(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 25)*

45 IAC 2.2-4-35 Auction sales; application of exemption

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 35. (a) An auction that meets all of the following conditions is casual sale and is therefore not subject to sales tax:

(1) The sale must be on premises owned or provided by the owner of the tangible personal property being sold and not the auctioneer.

(2) The tangible personal property must not have been purchased for resale nor consigned by a third party for sales.

(b) Auctions which do not meet the above conditions are subject to sales tax.

(c) In the event that certain tangible personal property being sold at a particular auction sale meets the above conditions but other property fails to meet such conditions sales tax must be collected on the sale of all property failing to meet the conditions.

(d) If such a taxable sale is conducted by a licensed auctioneer, the auctioneer is a retail merchant with respect to the property being sold and is responsible for the collection of the sales tax thereon.

(e) If such a sale is conducted by the owner or consignee (or his agent other than a licensed auctioneer), the owner, (consignee) becomes a retail merchant and must collect sales tax on the property being sold.

(f) Before conducting a taxable sale as defined above, a licensed auctioneer or owner (consignee) must obtain a Registered

Retail Merchant Certificate from the Department of Revenue. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-12(b)(020); filed Dec 1, 1982, 10:35 am: 6 IR 25)*

Rule 5. Exempt Transactions of a Retail Merchant

45 IAC 2.2-5-1 Agricultural production; definitions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 1. (a) Definitions. "Farmers" means only those persons occupationally engaged in producing food or agricultural commodities for sale or for further use in producing food or such commodities for sale. These terms are limited to those persons, partnerships, or corporations regularly engaged in the commercial production for sale of vegetables, fruits, crops, livestock, poultry, and other food or agricultural products. Only those persons, partnerships, or corporations whose intention it is to produce such food or commodities at a profit and not those persons who intend to engage in such production for pleasure or as a hobby qualify within this definition.

"Farming" means engaging in the commercial production of food or agricultural commodities as a farmer.

"To be directly used by the farmer in the direct production of food or agricultural commodities" requires that the property in question must have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces food or an agricultural commodity.

(b) The state gross retail tax shall not apply to:

(1) Sales to farmers of animals and poultry used for breeding purposes are exempt from tax provided the farmer used such animals and poultry to breed animals and poultry to be used by the farmer in the production of food or agricultural commodities.

(2) Sales to farmers of animals and poultry to be directly used by the farmer in the direct production of food and agricultural commodities are exempt from tax. Domestic animals and birds, pets, game animals and birds, furbearing animals, fish, and other animals or poultry not directly used by the farmer in the direct production of food or agricultural commodities are subject to tax. Baby chicks, ducklings, geese, turkey poults, hatching eggs, pigs, hogs *[sic., ,]* lambs, sheep, livestock, calves, and cows are exempt from tax, provided that they are directly used by the farmer in the direct production of food or agricultural commodities for sale.

(3) Sales to farmers and to other persons occupationally engaged in the business of producing food and agricultural commodities for human, animal, or poultry consumption (either for sale or for further use in producing such food and agricultural commodities for sale) of animal and poultry life to be directly used by the purchaser in the direct production of food and agricultural commodities.

(4) Sales of animals and poultry to a farmer to be directly used by the farmer in the direct production of food or agricultural commodities (either for sale or for further use in producing such food or commodities for sale) for human, animal, or poultry consumption are exempt from tax.

(c) Energy Equipment. (1) Equipment used to modify energy purchased from public utilities for the production process is exempt if the equipment is used to modify the utilities for use by exempt equipment.

(2) Equipment used to create energy that could otherwise be purchased exempt from a public utility for use by exempt equipment is exempt.

(3) When any equipment qualifies as essential and integral to the production process and also is used in an alternative nonessential and/or non-integral manner, the exemption shall only apply to the percentage (%) of use of the equipment used in the exempt manner. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-1(010); filed Dec 1, 1982, 10:35 am: 6 IR 25; filed Aug 6, 1987, 4:30 pm: 10 IR 2614)*

45 IAC 2.2-5-2 Sales to farmers; feed

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 2. (a) The state gross retail tax shall not apply to any of the following transactions:

(1) Sales to farmers of feed for animals and poultry used by the purchaser in the direct production of food and agricultural

commodities.

(2) Sales of feed for animals and poultry to a farmer to be directly used by the farmer in the direct production of food or agricultural commodities for human, animal, or poultry consumption are exempt from tax.

(3) Sales to farmers of feed for animals and poultry are exempt from tax, provided such feed is to be used for animals and poultry which were purchased exempt from tax. This exemption applies also to feed purchased for animals and poultry which are raised by a farmer entitled to this exemption and which animals or poultry would have qualified for exemption if they had been purchased by the farmer.

(b) Definition: The term "feed" includes salt, grains, tankage, oyster shells, mineral supplements, vitamins, and other generally recognized animal feed. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-1(020); filed Dec 1, 1982, 10:35 am: 6 IR 26; filed Aug 6, 1987, 4:30 pm: 10 IR 2615)*

45 IAC 2.2-5-3 Sales to farmers; agricultural commodities

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 3. (a) Definitions: Fertilizer. The term "fertilizer" means a commodity which contains one or more substances to increase the available plant food content of the soil and which becomes a part of the products grown therein.

Farmer. For definition of "farmer" as used in this regulation *[45 IAC 2.2]* refer to Regs. 6-2.5-5-1(010) *[45 IAC 2.2-5-1]*.

Farming. The term "farming" means engaged in the commercial production of food or agricultural commodities as a "farmer".

(b) In general, purchases of tangible personal property by farmers are taxable. The exemptions provided by this regulation *[45 IAC 2.2]* apply only to seeds, fertilizers, fungicides, insecticides, and other tangible personal property to be directly used by the farmer in the direct production of food and agricultural commodities. This exemption is limited to "farmers".

(c) The state gross retail tax shall not apply to:

(1) Sales to farmers and to other persons occupationally engaged in the business of producing food and agricultural commodities for human, animal, and poultry consumption (either for sale or further use in producing such food and agricultural commodities for sale) of seeds, plants, fertilizers, fungicides, insecticides, and other tangible personal property to be directly used by the purchaser in the direct production of food and agricultural commodities.

(2) Sales to farmers of seeds, plants, fertilizers, fungicides, insecticides, and other tangible personal property to be directly used by the farmer in the direct production of food or agricultural commodities for human, animal, or poultry consumption either for sale or for further use in producing food and agricultural commodities for sale are exempt from tax. "To be directly used in the direct production of food or agricultural commodities for human, animal, or poultry consumption either for sale or for further use in producing food and agricultural commodities for sale," the property in question must have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces food or an agricultural commodity.

(3) Seeds and plants. Sales to farmers of seeds and plants for sale or for further use in producing food and agricultural commodities for sale are exempt from tax provided such seeds and plants are used directly in farming.

(4) Fertilizer. Sales to farmers of fertilizer are exempt from tax provided that such fertilizer is used directly in farming.

(5) Fungicides and insecticides. Sales to farmers of fungicides and insecticides are exempt from tax provided such items are used directly in farming.

(6) Sales to farmers of tangible personal property used to groom or treat poultry and animals used in the production of food, so as to preserve their health, (including property such as medicines, serums, dehorners, debeakers, hoof trimmers *[sic.,]* hormones for productive animals, inoculation needles, and syringes) are exempt from tax.

(d) Non-exempt purchases:

(1) Other tangible personal property. Sales to farmers of other tangible personal property are taxable unless the property is used in direct production of food or agricultural commodities.

(2) Sales of beds, mattresses, kitchen equipment, recreation items, etc., used in conjunction with the operation of migrant labor camps are taxable. Such items are not used directly in farming.

(3) Sales to farmers of property to be incorporated into real estate in such a manner as to become part of the real estate are taxable. If the unit is directly used for manufacture or a process of manufacture, it is to be considered as personal property.

(4) Materials purchased for use in construction, reconstruction, alteration, remodeling, servicing, repairing, maintenance, or improvement of farm buildings incorporated into realty are taxable.

(5) Purchases of fences, fencing material, gates, posts, fence stretchers, and electric fence chargers are taxable.

(6) Purchases of watering tubs and troughs and tile for drainage are taxable.

(7) Tangible personal property purchased by a farmer for use in general farm maintenance of taxable items is taxable.

(8) Sales to farmers of tangible personal property to be used in managerial, sales, or other farm activities not directly related to the production of food are taxable. The following farm activities are not directly related to the production of food or agricultural commodities: farm management and administration; selling and marketing; exhibition of farm products; safety and fire prevention; illumination for farm buildings, transportation of animals, poultry, feed, fertilizer, etc., to the farm for use in farming; and transportation of animals, poultry, and other farm produce from the farm to market.

(9) Buildings which only protect the animals from adverse weather conditions are taxable.

(e) Exempt Purchases: (1) Heating, cooling, and ventilation equipment for agricultural production is exempt when it is directly used in the direct agricultural production process provided that such equipment is directly used in the production process, i.e. has an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces food or agricultural commodities.

(2) Confinement buildings that confine animals in order to (1) maintain physical integrity of the product, (2) create and control the environment in order to facilitate production, and (3) function in conjunction with exempt machinery such as fans, thermostats, vents, cooling and heating systems, are exempt. In addition, in order to qualify for the exemption, the confinement building must serve a breeding, gestation, farrowing, and nursing or finishing function. For purposes of this exemption, confinement involves holding the animal within the confines of the building or an attached confined porch area.

(3) Fences, fencing materials, gates, posts, and electric fence chargers (listed in 45 IAC 2.2-5-3(d)(6) and 2.2-5-4(c) *[45 IAC 2.2-5-4(c)]*) are exempt only if the same are purchased for use in confining livestock during the production processes of breeding, gestation, farrowing, calving, nursing, or finishing. Fencing materials are taxable if the fence is used to confine horses, ponies, donkeys, or pets not used in agricultural production. Fencing materials are also taxable if the fence is used only as a partition fence between adjoining landowners or as a means to keep wildlife, stray animals, or trespassers from entering cropland or farm premises.

(4) Purchases of feeding and watering equipment. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-5-1(030); filed Dec 1, 1982, 10:35 am: 6 IR 26; filed Aug 6, 1987, 4:30 pm: 10 IR 2615)*

45 IAC 2.2-5-4 Farmers and others engaged in agricultural production

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 4. (a) Agricultural exemption certificates may be used only if the purchaser is occupationally engaged in the business of producing food or commodities for human, animal, or poultry consumption for sale or for further use in such production.

(b) The department has determined that persons occupationally engaged in producing food and commodities as used in the Indiana sales and use tax act, shall mean and include only those persons, partnerships, or corporations whose intention it is to operate a farm at a profit and not those persons who intend to operate a farm for pleasure as a hobby. Operations similar to those of a pony farm, riding stable, or the production and raising of dogs and pets, are not classified as farms for the purpose of the state gross retail tax act.

(c) The following is a partial list of items which are considered subject to the sales tax.

TAXABLE TRANSACTIONS

Fences, posts, gates, and fencing materials.
Water supply systems for personal use.
Drains.
Any motor vehicle which is required by the motor vehicle law to be licensed for highway use.
Ditchers and graders.
Paints and brushes.
Refrigerators, freezers, and other household appliances.
Garden and lawn equipment, parts, and supplies.
Electricity for lighting and other non-agricultural use.
Any materials used in the construction or repair of non-exempt: buildings, silos, grain bins, corn cribs, barns, houses, and any other permanent structures.
Items of personal apparel, including footwear, gloves, etc., furnished primarily for the convenience of the workers if the workers

are able to participate in the production process without it.
Pumps.
All saws.
All tools, including forks, shovels, hoes, welders, power tools, and hand tools.
Building materials or building hardware such as lumber, cement, nails, plywood, brick, paint.
Plumbing, electrical supplies, and accessories, pumps.
Horses, ponies, or donkeys not used as draft animals in the production of agricultural products.
Food for non-exempt horses, ponies, etc.
Fertilizer, pesticides, herbicides, or seeds to be used for gardens and lawns.
Field tile or culverts.
Graders, ditchers, front end loaders, or similar equipment (except equipment designed to haul animal waste).
Any replacement parts or accessories for the above items.

(d) Each of the following items is considered exempt from the sales tax ONLY when the purchaser is occupationally engaged in agricultural production and uses the items directly in direct production of agricultural products.

EXEMPT TRANSACTIONS

(1) Livestock and poultry sold for raising food for human consumption and breeding stock for such purposes.
(2) Feed and medicines sold for livestock and poultry described in Item (1).
(3) Seeds, plants, fertilizers, fungicides, insecticides, and herbicides.
(4) Implements used in the tilling of land and harvesting of crops therefrom, including tractors and attachments.
(5) Milking machines, filters, strainers, and aerators.
(6) Gasoline and other fuel and oil for farm tractors and for other exempt farm machinery.
(7) Grease and repair parts necessary for the servicing of exempt equipment.
(8) Containers used to package farm products for sale.
(9) Equipment designed to haul animal waste.
(10) Equipment such as needles, syringes, and vaccine pumps.

(e) The fact that an item is purchased for use on the farm does not necessarily make it exempt from sale *[sic.]* tax. It must be directly used by the farmer in the direct production of agricultural products. The property in question must have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces agricultural products. The fact that a piece of equipment is convenient, necessary, or essential to farming is insufficient in itself to determine if it is used directly in direct production as required to be exempt.

(f) If a farmer makes a purchase tax exempt and later determines that the purchase should have been taxable, a use tax is due on the purchase price and should be remitted to the department of revenue along with the next annual income tax return, except for sales tax on gasoline which must be shown on the claim for motor fuel tax refund.

(g) A farmer would not ordinarily qualify to claim an exemption on electric or other utility bills unless the amount of electricity used in direct agricultural production is separately metered. In order to qualify for an exemption when separate meters are not use *[sic.]*, a farmer should be prepared to prove to the satisfaction of the department of revenue that the predominant use of electricity was for direct agricultural production. An exemption should never be claimed for telephone service.

(h) The sale by a farmer of grocery food not for immediate human consumption from a stand located on the seller's property is not subject to sales tax, and the farmer is not required to register as a retail merchant unless he conduct *[sic.]* sales of taxable items.

–EXAMPLE–

The selling of whole watermelons by a farmer from a stand located on his property is not subject to sales tax. However, the selling of watermelon by the slice is subject to sales tax since the food is sold for immediate human consumption.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-1(040); filed Dec 1, 1982, 10:35 am: 6 IR 27; filed Aug 6, 1987, 4:30 pm: 10 IR 2617)

45 IAC 2.2-5-5 Raising horses, donkeys and ponies; application for sales tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 5. (a) The raising of saddle horses, harness horses, ponies, donkeys, or any other similar animals not used directly in

direct agricultural production does not qualify as agricultural production for "human consumption" under the gross retail sales and use tax act. Consequently, the purchase of supplies, food, materials, and equipment used in raising or maintaining such animals are subject to the sales tax unless the items are directly used or consumed in the production of such animals for resale in the regular course of the purchaser's business.

(b) The purchase of any of the above animals is subject to the sales tax unless the purchaser is a registered retail merchant and is buying such animal for resale in the regular course of his business.

(c) A valid exemption certificate must be furnished by the purchaser setting out the reasons for any exemption.

(d) An agricultural exemption certificate may be used only for the purchase of draft animals which are to be directly used in direct production of agricultural products. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-1(050); filed Dec 1, 1982, 10:35 am: 6 IR 29; filed Aug 6, 1987, 4:30 pm: 10 IR 2618)*

45 IAC 2.2-5-6 Direct production of agricultural commodities; sales of agricultural machinery

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 6. (a) In general, all purchases of tangible personal property by persons engaged in the direct production, extraction, harvesting, or processing of agricultural commodities are taxable. (The exemption provided in this regulation *[45 IAC 2.2]* extends only to agricultural machinery, tools, and equipment.)

(b) The state gross retail tax shall not apply to sales of agricultural machinery, tools, and equipment to be directly used by the purchaser in the direct production, extraction, harvesting, or processing or *[sic.]* agricultural commodities.

(c) Purchasers of agricultural machinery, tools, and equipment to be directly used by the purchaser in the direct production, extraction, harvesting, or processing of agricultural commodities are exempt from tax provided such machinery, tools, and equipment have a direct effect upon the agricultural commodities produced, harvested, etc. Property is directly used in the direct production, extraction, harvesting, or processing of agricultural commodities if the property in question has an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process, i.e. confinement buildings, cooling, heating, and ventilation equipment. The fact that such machinery, tools, or equipment may not touch the commodity or livestock or, by itself, cause a change in the product, is not determinative.

(d) Exempt purchases: (1) Feeds–Sales of agricultural machinery, tools, and equipment used by the purchaser directly in feeding exempt animals, poultry, etc., are exempt from tax. This exemption does not extend to machinery, equipment, and tools used for the handling, movement, transportation, or storage of feed prior to the actual feeding process.

(2) Seeds and plants–Sales of agricultural machinery, tools, and equipment to be used directly by the purchaser to plant seeds and plants purchased exempt from tax are exempt from tax. This exemption does not apply to lawn tractors used to plant grass seed, storage equipment, transportation equipment, or to machinery, tools, or equipment to be incorporated into real estate.

(3) Fertilizers–Sales of agricultural machinery, tools, and equipment to be directly used by the purchaser to fertilize crops. This exemption does not apply to storage equipment, transportation equipment, or to machinery, tools, or equipment to be incorporated into real estate.

(4) Insecticides and fungicides–Sales of agricultural machinery, tools, and equipment to be directly used by the purchaser to apply insecticides and fungicides are exempt from tax. This exemption does not apply to storage equipment, transportation equipment, or machinery, tools, or equipment to be incorporated into real estate.

(5) Other exempt agricultural machinery, tools, and equipment. Sales of other agricultural machinery, tools, and equipment to be directly used by the purchaser in the direct production, extraction, harvesting, or processing or *[sic.]* agricultural commodities are exempt from tax provided such machinery, tools, and equipment are directly used in the production process, i.e. they have an immediate effect upon the agricultural commodities being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces agricultural commodities.

(6) Automatic watering equipment for crops; fruit or crop harvesting or picking equipment; machinery and equipment used to bale crops; pruning machinery and equipment used for fruit trees; and equipment used to shear wool from sheep and similar tangible personal property.

(7) Tangible personal property used in or for the purpose of storing work-in-process or semi-finished goods is not subject to tax if the work-in-process or semi-finished goods are ultimately or completely produced for resale and are, in fact, resold. Storage facilities or containers for materials or items currently undergoing production during the production process are deemed temporary storage facilities and containers.

(8) Machinery, tools, and equipment used to move a crop from the field where it was grown and harvested to equipment for temporary storage or for further processing.

(9) Machinery, tools, and equipment used to move exempt items such as seeds, plants, fertilizers, insecticides, and fungicides from temporary storage to the location where such will be used in an exempt process.

(10) Replacement parts used to replace worn, broken, inoperative, or missing parts on exempt machinery and equipment.

(11) Safety clothing or equipment which is required to allow a farmer to participate in the production process without injury or to prevent contamination of the livestock or commodity during production.

(e) Taxable purchases: (1) Storage equipment. Machinery, tools, and equipment used for storage of agricultural commodities after completion of the production of agricultural commodities are taxable.

(2) Machinery, tools, and equipment which become incorporated into real property are taxable except such machinery, tools, and equipment that are directly used in the production process; i.e., they have a direct effect upon the agricultural commodities being produced, harvested, extracted, or processed.

(3) Machinery, tools, and equipment used in general farm maintenance are taxable. The sale of paint brushes and sprays, oilers, blowers, wheelbarrows, brooms, chain saws, power tools, welders, tire spreaders, drills, sanders, wrenches, and other tools used in general cleaning and maintenances are taxable. However, replacement parts used to replace worn, broken, inoperative, or missing parts on exempt machinery and equipment, are exempt from tax.

(4) Sales of machinery, tools, and equipment to be used in managerial, sales, research, and development, or other nonoperational activities not directly used in production, harvesting, extraction, and processing of agricultural commodities are taxable. This category includes, but is not limited to, machinery, tools, and equipment used in any of the following activities: farm management and administration; selling and marketing; exhibition of farm products; safety and fire prevention; illumination for farm buildings; lighting fixtures for general illumination; heating and cooling equipment for general temperature control; transportation of animals, poultry, feed, fertilizer, etc., to the farm for use in farming; transportation of animals, poultry, and other farm produce from the farm to market.

(f) "Agricultural machinery, tools, and equipment" as used in this regulation *[45 IAC 2.2]* refers to machinery, tools, and equipment used on a farm to cultivate, grow, produce, reproduce, harvest, extract or process animals, poultry, and crops used to produce food or agricultural commodities for human or animal consumption (or for further use in producing food or agricultural commodities).

(g) "Direct production, extraction, harvesting or processing agricultural commodities" means action which has an immediate effect on the agricultural commodities being produced by "farming" as defined in Regs. 6-2.5-5-1(010) *[45 IAC 2.2-5-1]* for a human, animal, or poultry consumption. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces agricultural commodities.

(h) Farmer and farming. Refer to Regs. 6-2.5-5-1(010) *[45 IAC 2.2-5-1]* for definitions of "farmer" and "farming". *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-2(010); filed Dec 1, 1982, 10:35 am: 6 IR 29; filed Aug 6, 1987, 4:30 pm: 10 IR 2619)*

45 IAC 2.2-5-7 Direct production of grain; sales of agricultural machinery

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 7. (a) Agricultural machinery, tools, and equipment directly used in the direct production, extraction, harvesting, or processing of grain, from the time the grain is harvested until the time the grain is dried, are exempt so long as the agricultural machinery, tools, and equipment have an immediate effect upon the grain. Property has an immediate effect on the grain being produced if it is an essential and integral part of an integrated process which produces grain.

–EXAMPLE–

Machinery, tools, and equipment directly used in the processing, drying, or cleaning of grain.

(b) Transportation equipment directly used in the direct production of grain is exempt so long as such equipment has an immediate effect upon the grain. Property has an immediate effect on the grain being produced if it is an essential and integral part of an integrated process which produces grain.

(1) Grain augers which contain perforated cleaning screens are exempt, since this equipment separates foreign matter from grain and, therefore, is an essential and integral part of an integrated process in direct production, which produces grain.

(2) Grain augers without perforated cleaning screens used exclusively to transport wet grain are exempt, since such

transportation aerates wet grain and, therefore, has a direct and immediate effect upon the grain and is an essential and integral part of an integrated process which produces grain.

(3) Machinery, tools, and equipment directly used to transport grain from the field where it is harvested to the production processes of drying, cleaning, and holding for the feeding of livestock, or to be further used in the production of food and commodities are exempt.

(c) Wet holding tanks, continuous flow driers, and batch driers are exempt, since these items are integral parts of drying systems and, therefore, such equipment is directly used in direct production of grain.

(d) Grain drying bins. The department has determined that grain drying accessories of a grain drying bin are exempt, since such equipment is used to dry wet grain and, therefore, has a direct and immediate effect upon grain. Alternatively, the department has determined that a grain drying bin's storage structure and parts thereof are subject to tax, since the storage of grain has no direct and immediate effect upon grain.

(1) The following is a list of grain drying bin accessories which are exempt from tax:

(A) drying floor;
(B) air entrance;
(C) stirring devices;
(D) fans and motor running fans;
(E) electricity (if predominantly used);
(F) electrical control panels;
(G) spreader; and
(H) floor supports.

(2) The following is a partial list of grain drying bin storage accessories which are subject to tax:

(A) anchor bolts;
(B) bin structure;
(C) roof and vents;
(D) unloading auger;
(E) clean sweep;
(F) wells and pulleys;
(G) platform; and
(H) ladders.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-2(020); filed Dec 1, 1982, 10:35 am: 6 IR 30; filed Aug 6, 1987, 4:30 pm: 10 IR 2621)

45 IAC 2.2-5-8 Sales of manufacturing machinery, tools and equipment used in direct production, manufacture, fabrication, assembly, or finishing of other tangible personal property

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 8. (a) In general, all purchases of tangible personal property by persons engaged in the direct production, manufacture, fabrication, assembly, or finishing of tangible personal property are taxable. The exemption provided in this regulation *[45 IAC 2.2]* extends only to manufacturing machinery, tools, and equipment directly used by the purchaser in direct production. It does not apply to material consumed in production or to materials incorporated into tangible personal property produced.

(b) The state gross retail tax does not apply to sales of manufacturing machinery, tools, and equipment to be directly used by the purchaser in the direct production, manufacture, fabrication, assembly, or finishing of tangible personal property.

(c) The state gross retail tax does not apply to purchases of manufacturing machinery, tools, and equipment to be directly used by the purchaser in the production process provided that such machinery, tools, and equipment are directly used in the production process; i.e., they have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

–EXAMPLES–

(1) Aluminum pistons are produced in a manufacturing process that begins, after the removal of raw aluminum from storage inside the plant, with the melting of the raw aluminum and the production of castings in the foundry; continues with the machining of the casting and the plating and surface treatment of the piston; and ends prior to the transportation of the

completed pistons to a storage area for subsequent shipment to customers. Because of the functional interrelationship of the various steps and the flow of the work-in-process, the total production process, comprised of such activities, is integrated.

(2) The following types of equipment constitute essential and integral parts of the integrated production process and are, therefore, exempt. The fact that such equipment may not touch the work-in-process or, by itself, cause a change in the product, is not determinative.

(A) Air compressors used as a power source for exempt tools and machinery in the production process.

(B) An electrical distribution system, including generators, transformers, electrical switchgear, cables inside or outside the plant, and related equipment used to produce and/or supply electricity to exempt manufacturing equipment used in direct production.

(C) A pulverizer for raw materials to be used in an exempt furnace to produce and/or supply energy to manufacturing equipment used in direct production.

(D) Boilers, including related equipment such as pumps, piping systems, etc., which draw water, or produce and transmit steam to operate exempt machinery and equipment used in direct production.

(E) A work bench used in conjunction with a work station or which supports production machinery within the production process.

(F) Safety clothing or equipment which is required to allow a worker to participate in the production process without injury or to prevent contamination of the product during production.

(G) An automated scale process which measures quantities of raw aluminum for use in the next production step of the casting process in the foundry.

(3) The following types of equipment constitute essential and integral parts of the integrated production process and are, therefore, exempt. The fact that such equipment is built in a manner to service various pieces of exempt equipment, as an alternative to building the equipment into each of the pieces of exempt machinery, is not determinative.

(A) Pumping and filtering equipment and related tanks and tubing used to supply lubricating and coolant fluids to exempt drilling and cutting machinery.

(B) Cooling towers and related pumps and piping used to cool, circulate, and supply water employed to control the temperature of exempt furnaces and exempt machines used in the foundry and machining areas.

(C) Pumping and filtering equipment, including related tanks and tubing, is used to supply lubricating and coolant fluids to both exempt and nonexempt equipment. On the average, 90% of the fluid is used for the exempt equipment employed in direct production and 10% is used for the nonexempt equipment. The taxpayer is entitled to an exemption equal to 90% of the gross retail income attributable to the transaction or transactions in which the equipment comprising the production process was purchased.

(4) Because of the lack of an essential and integral relationship with the integrated production system in Example (1), the following types of equipment are not exempt:

(A) Equipment and furnishings located in the administrative offices of the plant.

(B) Clothing or other equipment furnished to workers that is used primarily for the workers' comfort and convenience if the workers are able to participate in the production process without it.

(C) An electrical distribution system, including electrical switchgear, transformers, cables, and related equipment used to supply electricity to the administrative office building.

(D) A boiler used to produce steam for general heating in the plant or administrative office building.

(E) A fire extinguisher hung on a wall inside the plant.

(F) Ceiling lights for general illumination in the plant area.

(G) Equipment used to remove raw materials from storage prior to introduction into the production process or to move finished products from the last step of production.

(5) A computer is used to control and monitor various aspects of the plating and surface-treatment operations in Example (1). The computer is located in a separate room in a different part of the plant from the plating and surface-treatment operations but is connected to the equipment comprising those operations by means of electrical devices. The computer equipment, including related terminals, printer, and memory, data storage, and input/output devices, is exempt because its use in this manner is an integral and essential part of the integrated production process.

(6) A computer is used to process accounting, personnel, and sales data. The computer is taxable because its use in this manner is not an integral and essential part of the integrated production process.

(7) A computer is used 40% of the time to perform the functions described in Example (5) and 60% of the time to perform

the functions described in Example (6). The taxpayer is entitled to an exemption for the computer equipment, including related equipment such as that described in Example (5), equal to 40% of the gross retail income attributable to the transaction or transactions in which the computer equipment was purchased.

(8) A manufacturer of high technology electronic equipment uses microscopes to enable technicians to produce miniaturized products which could not otherwise be produced. The microscope is essential and integral to the production process. The microscopes are exempt from tax.

(9) A manufacturer of printed circuit boards uses a computerized locator system to assist and direct employees in placing components in their correct positions on printed circuit boards. The system visually demonstrates the location on the board requiring a component and at the same time dispenses the appropriate component for insertion by the employee. The locator system is an essential and integral part of the integrated production process and is, therefore, exempt.

(10) An electrical distribution system, including electrical switchgear, transformers, cables, and related equipment, is used to supply electricity to both equipment used in production and to an administrative office building. On the average, 90% of the electricity is used for the equipment employed in direct production and 10% for the administrative office building. The taxpayer is entitled to an exemption equal to 90% of the gross retail income attributable to the transaction or transactions in which the equipment comprising the electrical distribution system was purchased.

(d) Pre-production and post-production activities. "Direct use in the production process" begins at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the production has altered the item to its completed form, including packaging, if required.

–EXAMPLE–

(1) The production of pharmaceutical items is accomplished by a process which begins with weighing and measuring out appropriate ingredients, continues with combining and otherwise treating the ingredients, and ends with packaging the items. Equipment used to transport raw materials to the manufacturing plant is employed prior to the first operation or activity constituting part of the integrated production process and is taxable. Weighing and measuring equipment and all equipment used as an essential and integral part of the subsequent manufacturing steps, through packaging, qualify for exemption. Equipment which loads packaged products from the packaging step of production into storage, or from storage into delivery vehicles, is subject to tax.

(e) Storage equipment. Tangible personal property used in or for the purpose of storing raw materials or finished goods is subject to tax except for temporary storage equipment necessary for moving materials being manufactured from one (1) machine to another or from one (1) production step to another.

(1) Temporary storage. Tangible personal property used in or for the purpose of storing work-in-process or semi-finished goods is not subject to tax if the work-in-process or semi-finished goods are ultimately completely produced for resale and in fact resold.

(2) Storage containers for finished goods after completion of the production process are subject to tax.

(3) Storage facilities or containers for materials or items currently undergoing production during the production process are deemed temporary storage facilities and containers and are not subject to tax.

–EXAMPLES–

(1) Purchases of refrigeration equipment used in milk product production during the production process are exempt. However, refrigeration equipment used to store milk products subsequent to production is taxable.

(2) Parts undergoing various machining operations are transported from a machine operation to a storage rack where they are held for periods of time, as required by the processing schedule for the next machine operation in the integrated production process. The length of time required for storage in the processing schedule is not determinative. As the processing schedule dictates, the parts are removed from the storage racks and transported to the next machine operation. The storage racks are exempt.

(3) Finished goods are placed in the packages in which they will be delivered to customers, and the packages are loaded onto storage pallets which are used only in a finished goods storage area. The pallets are taxable.

(4) A metal and alloy manufacturer pulverizes raw materials for use in an exempt furnace. Weigh bins utilized for the temporary storage of the exempt materials after pulverization and prior to use in the exempt furnace are exempt.

(5) Replacement parts for manufacturing equipment are kept in storage bins in the plant "store". The storage bins are taxable because they do not store work-in-process or semi-finished goods.

(f) Transportation equipment.

(1) Tangible personal property used for moving raw materials to the plant prior to their entrance into the production process

is taxable.

(2) Tangible personal property used for moving finished goods from the plant after manufacture is subject to tax.

(3) Transportation equipment used to transport work-in-process or semi-finished materials to or from storage is not subject to tax if the transportation is within the production process.

(4) Transportation equipment used to transport work-in-process, semi-finished, or finished goods between plants is taxable, if the plants are not part of the same integrated production process.

–EXAMPLES–

(1) A manufacturer of clay pipe uses forklift tractors to transport the pipe from the machine in which it is formed to the kiln. The forklift tractors are exempt.

(2) A metal and alloy manufacturer pulverizes raw materials for use in an exempt furnace. Weigh bins are utilized for the temporary storage of the exempt materials after pulverization and prior to use in an exempt furnace. Transportation equipment used to transport the pulverized raw material to and from the weigh bins is exempt.

(3) A forklift is used exclusively to move work-in-process from a temporary storage area in a plant and to transport it to a production machine for processing. Because the forklift functions as an integral part of the integrated system comprising the production operations, it is exempt.

(4) A forklift is used exclusively to move finished goods from a storage warehouse and to load them on trucks for shipment to customers. The forklift is taxable because it is used outside the integrated production process.

(5) A forklift is regularly used 40% of the time for the purpose described in Example (3) and 60% of the time for the purpose described in Example (4). The taxpayer is entitled to an exemption equal to 40% of the gross retail income attributable to the transaction in which the forklift was purchased.

(6) A truck is used to transport work-in-process between different buildings which are part of an overall plant facility that constitutes an integrated production process. The truck is exempt.

(7) A truck is used for the same purpose as described in Example (6). However, the two buildings in the plant facility are located on opposite sides of a federal highway, and the truck must be registered with the Indiana bureau of motor vehicles for highway use because it crossed the highway in transporting the work-in-process between buildings. The truck is exempt, notwithstanding its registration for highway use.

(8) A truck is used on the federal highway and must be registered with the Indiana bureau of motor vehicles for highway use. The truck is used to transport a finished component part from the last step of a production process to be introduced into another integrated production process at another business location. The truck is taxable.

(9) A truck is used 40% of the time for the purpose described in Example (6) and 60% of the time for the purpose described in Example (8). The taxpayer is entitled to an exemption equal to 40% of the gross retail income attributable to the transaction in which the truck was purchased.

(10) A crane is used to unload a barge delivering raw materials to a steel plant where the raw materials are stockpiled in a storage yard adjacent to the plant. The crane is taxable.

(11) A crane is used to move stockpiled materials to the next step of production for processing. Stockpiling allows moisture to drain and evaporate from washed stone, thereby reducing moisture levels to a standard generally acceptable to stone purchasers. The crane is exempt.

(12) A crane is used 40% of the time for the purpose described in Example (8), and 60% of the time to move raw materials from the stockpile to a production machine for processing. The taxpayer is entitled to an exemption equal to 60% of the gross retail income attributable to the transaction in which the crane was purchased.

(g) "Have an immediate effect upon the article being produced": Machinery, tools, and equipment which are used during the production process and which have an immediate effect upon the article being produced are exempt from tax. Component parts of a unit of machinery or equipment, which unit has an immediate effect on the article being produced, are exempt if such components are an integral part of such manufacturing unit. The fact that particular property may be considered essential to the conduct of the business of manufacturing because its use is required either by law or by practical necessity does not itself mean that the property "has an immediate effect upon the article being produced". Instead, in addition to being essential for one of the above reasons, the property must also be an integral part of an integrated process which produces tangible personal property.

–EXAMPLES–

(1) The manufacturing equipment utilized for the production of plastics consists of an interconnected system which contains among its components a coal fueled boiler, heat exchangers, vacuum jets, process heating vessels, distillation/stripping columns, related equipment, and piping. All elements of this integrated production process are exempt from tax.

(2) Steam generators used to heat water which is used in mixing and warming component materials in the manufacture of ready-mixed concrete are exempt from tax.

(3) The manufacturer of certain extruded rubber products uses an interconnected production process of an air compressor, an air dryer, and injection molding machines which work together to force rubber through dies in order to form the desired shapes. The component parts of the production process are exempt since the production process has an immediate effect upon the article being produced.

(4) Equipment which constitutes an essential and integral part of the integrated process is exempt. The fact that such equipment is built in a manner to service various pieces of exempt equipment, as an alternative to building the equipment into each of the pieces of exempt machinery, is not determinative.

The production of flat-rolled metal products requires that an oil mixture, which serves as both a rolling lubricant and a coolant, be continuously sprayed on sheets in the rolling mill. Spent oil is simultaneously removed and passed through a filtering process which is interconnected with the rolling mill, after which the oil is resprayed onto the sheets. The rolling mill and oil filtration process are exempt.

(5) A metal manufacturer uses a variety of electrically-powered production equipment which has differing voltage and power requirements. Power cables used to bring electricity to the manufacturer's plant are taxable. Switch gears, transformers, conduits, cables, controls, rectifiers, and generators which are interconnected with the production equipment and serve as an electrical distribution system for such equipment are exempt from tax. Items used to distribute electricity for general lighting and space heating are taxable.

(6) Computers which are interconnected with and control other production machinery or are used to make tapes which control computerized production machinery are exempt from tax.

(7) Computers which produce designs which are not sold as products are not exempt. Thus, computer-aided design is a non-exempt function.

(8) A computer is used 40% of the time for the purpose described in Example (6) and 60% of the time for the purpose described in Example (7). The taxpayer is entitled to an exemption equal to 40% of the gross retail income attributable to the transaction in which the computer was purchased.

(9) For security reasons, a mesh screen is installed around the parts and equipment "store" in a manufacturing plant. Because the screen has no physical or functional interrelationship with other parts of the integrated production process, it does not have an immediate effect on the article being produced and is taxable.

(h) Maintenance and replacement equipment.

(1) Machinery, tools, and equipment used in the normal repair and maintenance of machinery used in the production process which are predominantly used to maintain production machinery are subject to tax.

(2) Replacement parts, used to replace worn, broken, inoperative, or missing parts or accessories on exempt machinery and equipment, are exempt from tax.

–EXAMPLE–

A manufacturer of sheet metal repairs and upgrades used machinery by replacing worn or broken parts and adding new elements and features available in state-of-the-art equipment. All items which become components of the upgraded machinery are exempt from tax. However, all tools and equipment used to repair or upgrade used machinery would be taxable.

(i) Testing and inspection. Machinery, tools, and equipment used to test and inspect the product as part of the production process are exempt.

–EXAMPLE–

Selected parts are removed from production according to a schedule dictated by statistical sampling methods. Quality control equipment is used to test the parts in a room in the plant separate from the production line. Because of the functional interrelationship between the testing equipment and the machinery on the production line and because of the product flow, the testing equipment is an integral part of the integrated production process and is exempt.

(j) Managerial, sales, and other non-operational activities. Machinery, tools, and equipment used in managerial sales, research, and development, or other non-operational activities, are not directly used in manufacturing and, therefore, are subject to tax. This category includes, but is not limited to, tangible personal property used in any of the following activities: management and administration; selling and marketing; exhibition of manufactured or processed products; safety or fire prevention equipment which does not have an immediate effect on the product; space heating; ventilation and cooling for general temperature control; illumination; heating equipment for general temperature control; and shipping and loading.

(k) "Direct production, manufacture, fabrication, assembly, or finishing of tangible personal property" is performance as a

business of an integrated series of operations which places tangible personal property in a form, composition, or character different from that in which it was acquired. The change in form, composition, or character must be a substantial change, and it must result in a transformation of property into a different product having a distinctive name, character, and use. Operations such as compounding, fabricating, or assembling are illustrative of the types of operations which may qualify under this definition.

(l) Energy equipment.

(1) Equipment used to modify energy purchased from public utilities purchased for the production process is exempt if the equipment is used to modify the utilities for use by exempt equipment.

(2) Equipment used to create energy that could otherwise be purchased exempt from a public utility for use by exempt equipment is exempt.

(3) When any equipment qualifies as essential and integral to the production process and also is used in an alternative nonessential and/or non-integral manner, the exemption shall only apply to the percentage of use of the equipment used in the exempt manner.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-3(010); filed Dec 1, 1982, 10:35 am: 6 IR 31; filed Aug 6, 1987, 4:30 pm: 10 IR 2621)

45 IAC 2.2-5-9 Sales of manufacturing machinery, tools and equipment to be directly used by the purchaser in extraction and mining

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 9. (a) In general, all purchases of tangible personal property by persons engaged in extraction or mining are taxable. The exemption provided in this regulation *[45 IAC 2.2]* extends only to manufacturing machinery, tools, and equipment directly used in mining or extraction. It does not apply to materials consumed in mining or extraction.

(b) The state gross retail tax shall not apply to sales of manufacturing machinery, tools, and equipment which are to be directly used by the purchaser in extraction or mining.

(c) Manufacturing machinery, tools, and equipment to be directly used by the purchaser in the extraction or mining process are exempt from tax provided that such machinery, tools and equipment are directly used in the production process; i.e., they have an immediate effect on the item being produced by mining or extraction. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

–EXAMPLES–

(1) Crushed stone is produced in a mining, production, and processing operation that begins with stripping overburden from an area to be mined, continues with the extraction and crushing of the stone, and ends with the stockpiling of the stone, which allows moisture to drain and evaporate from the washed stone, thereby reducing moisture levels to a standard more generally acceptable to stone purchasers. Because of the functional interrelationship of the various steps and the flow of the work-in-process, the total process comprised by these activities is integrated.

(2) Coal is produced in a surface mining operation that begins with the clearing of surface obstacles and overburden from the land above the coal deposit to be mined, continues with the removal of waste material and with the extraction of the coal, continues further with the transportation from the coal seam to the processing facility, continues further with the refilling and grading of the mined area with overburden and waste material from a subsequently mined area, continues further with the cleaning of the coal, and ends with the stockpiling of the coal to allow moisture to drain and evaporate from the washed coal, thereby reducing moisture levels to a standard more generally acceptable to coal purchasers. Because of the functional interrelationship of the various steps and the flow of the work-in-process, the total process comprised of such activities is integrated. The following items are exempt:

(A) Equipment used to modify the energy purchased for the surface mining process if the equipment is used to modify the energy for use by exempt equipment;

(B) Pumps and hose used to remove water or to divert water from the active pit area;

(3) "Coal is produced in an underground mining operation that begins with the boring of a shaft from the surface to the coal deposit to be mined, continues with the removal of waste material and the extraction of coal, continues further with transportation from the coal seam to the processing facility, continues further with the installation of roof supports and the coating of walls with rock dust to prevent mine explosion and collapse, continues further with cleaning of coal, and ends with the stockpiling of coal to allow moisture to drain and evaporate from the washed coal, thereby reducing moisture levels to

a standard more generally acceptable to coal purchasers. Because of the functional interrelationship of the various steps and the flow of the work in process, the total process comprised of such activities is integrated." The following are exempt:

(A) Continuous miners used to bore the shaft, cut the coal, and load it into shuttle cars.

(B) Shuttle cars used to transport the coal from the continuous miner to the feeder breaker at the end of a conveyor belt or other off-highway transportation system.

(C) The feeder breaker which breaks the large lumps of coal and feeds the coal onto the conveyor belt which carries the coal outside the mine where it is stockpiled or transported to the processing facility.

(D) Electrical cable supplying electricity to exempt production equipment in the underground mine as part of an electrical distribution system.

(E) Equipment used to modify the energy purchased for the underground mining process if the equipment is used to modify the energy for use by exempt equipment.

(F) Pumps and hose used to remove water from the underground mine.

(4) The following types of equipment constitute essential and integral parts of the integrated production process and are, therefore, exempt. The fact that such equipment may not touch the work-in-process or, by itself, cause a change in the product is not determinative.

(A) A drag line used to remove overburden and other waste materials from the pit to be mined.

(B) Earth-moving equipment used to dig a ditch to divert a stream crossing the area to be mined.

(C) Electrical cable supplying electricity to exempt production equipment in the field as part of an electrical distribution system.

(D) Dozers used in refilling and covering over a previously mined pit with the overburden removed from the next pit being mined.

(E) Equipment used in a coal wash plant to clean the coal prior to sale to customers.

(F) Equipment used to blend different grades of coal together so that the final product meets customer specifications regarding quality and sulfur content.

(5) Because of the lack of an essential and integral relationship with the integrated production process in Example (2), the following types of equipment are not exempt:

(A) Earth-moving equipment used to construct a parking lot next to the mining area and to construct a road leading from the parking lot to the main highway.

(B) Vehicles used to transport workers to and from the mining area.

(C) Pickup trucks used by supervisors in overseeing and directing the mining operations.

(d) Pre-production and post-production activities. "Direct use in the extraction and mining process" begins at the point of the first operation or activity constituting part of the integrated production process." Utilization by the purchaser in extraction or mining begins with the first drilling of the shaft or well or the first removal of overburden in surface mining or quarrying. It ends when the item being mined or extracted has been physically removed from the mine, well, or quarry.

(e) Equipment directly used in extraction or mining: Manufacturing machinery, tools, and equipment used directly in the mining or extraction process are taxable unless the machinery, tools, and equipment have an immediate effect upon mining or extracting the product. The fact that particular property may be considered essential to the conduct of the business of mining because its use is required either by law or practical necessity does not, of itself, mean that the property has an immediate effect upon the mining or extracting of the product. Instead, in addition to being essential for one of the above reason *[sic.]*, the property must also be an integral part of an integrated process.

(1) Examples of taxable machinery, tools, and equipment: transportation equipment used to convey fuel, supplies, and repair parts to coal mining equipment in the mine; field maintenance trucks used to transport men and materials to places where needed; and equipment used to load extracted and processed minerals from storage stockpiles to railroad cars.

(2) Examples of exempt machinery, tools, and equipment: digging and extracting equipment used in the course of mining or extraction operations; machinery used to remove the overburden in surface mining; blasting and dislodging equipment; waste extraction and removal equipment and machinery used in the course of mining or extraction operations; derricks, pumps, pump houses, drilling rigs used in the production of oil and natural gas.

(f) Storage equipment. Tangible personal property used in or for the purpose of storing raw materials or materials after completion of the extraction or mining process is taxable.

(1) Temporary storage. Tangible personal property used in or for the purpose of storing work-in-process or semi-finished goods is not subject to tax if the work-in-process or semi-finished goods are ultimately completely produced for resale and

in fact resold.

(2) Storage containers for finished goods after the completion of the extraction or mining process are subject to tax.

(A) Receiving tanks for natural gas, crude oil, or brine are taxable.

(B) Facilities for storing coal after extraction and processing from the mine are taxable.

(3) Storage facilities or containers for materials or items currently undergoing production during the production process are deemed temporary storage facilities and containers and are not subject to tax.

(g) Transportation equipment. Transportation equipment used in mining or extraction is taxable unless it is directly used in the mining or extraction process.

(1) Tangible personal property used for moving raw materials to the plant prior to their entrance into the production process is taxable.

(2) Tangible personal property used for moving finished goods from the plant after manufacture is subject to tax.

(3) Transportation equipment used to transport work-in-process or semi-finished materials within the extraction or mining process is not subject to tax.

(4) Transportation equipment used to transport work-in-process, semi-finished, or finished goods between plants which are not part of the same integrated production process is taxable.

–EXAMPLES–

(1) Haul trucks, front-end loaders, and conveyors used to transport coal from a crusher to a wash plant are exempt.

(2) Haul trucks, front-end loaders, and conveyors used to transport coal from a wash plant to a stockpile to allow moisture to drain and evaporate from the washed stone, thereby reducing moisture levels to a standard more generally acceptable to coal purchasers, are exempt.

(3) Front-end loaders, cranes, and equipment used to load coal onto trucks, railroad cars, or barges for delivery to customers are taxable.

(h) Maintenance and replacement.

(1) Machinery, tools, and equipment used in the normal repair and maintenance of machinery and equipment used predominantly in mining or extraction are subject to tax.

(2) Replacement parts, used to replace worn, broken, inoperative, or missing parts or accessories on exempt machinery and equipment, however, are exempt from tax.

(i) Testing and inspection.

(1) Machinery, tools, and equipment used to test or inspect the mineral, oil, gas, stone, etc., being mined or extracted are not taxable, as such machinery, tools, and equipment are directly used in the mining or extraction process.

(2) Testing or inspection equipment used to test or inspect machinery, tools, and equipment used in extraction or mining (as distinguished from testing or inspecting the mineral, oil, gas, stone, etc., being mined or extracted) is taxable.

(j) Managerial, sales, and other non-operational activities. Machinery, tools, and equipment used in managerial, sales, research and development, or other non-operational activities are not directly used in the mining or extraction process and, therefore, are subject to tax. The category includes, but is not limited to, tangible personal property used in any of the following activities: management and administration; selling and marketing; exhibition of mined or extracted products; safety or fire prevention equipment which is not an essential and integral part of the extraction or mining process; space heating; ventilation and cooling equipment for general temperature control; illumination; heating equipment for general temperature control; and shipping and loading.

(k) Definitions.

(1) Extraction means the removal of natural resources, minerals, and mineral aggregates from the earth, pits, or banks.

(2) Mining includes commercial mining (both deep and surface mining), quarrying, gas and oil drilling, and any other commercial extraction of natural resources, minerals, and mineral aggregates from the earth. It also includes the extraction for commercial purposes of coal, clay, crushed and graded stone, gravel, sand, oil, natural gas, gypsum, slate, ore, and all materials and similar natural resources and mineral aggregates.

(l) Energy equipment.

(1) Equipment used to modify energy purchased from public utilities purchased for the production process is exempt if the equipment is used to modify the utilities for use by exempt equipment.

(2) Equipment used to create energy that could otherwise be purchased exempt from a public utility for use by exempt equipment is exempt.

(3) When any equipment qualifies as essential and integral to the production process and also is used in an alternative

nonessential and/or non-integral manner, the exemption shall only apply to the percentage of use of the equipment used in the exempt manner.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-3(020); filed Dec 1, 1982, 10:35 am: 6 IR 32; filed Aug 6, 1987, 4:30 pm: 10 IR 2627)

45 IAC 2.2-5-10 Sales of manufacturing machinery, tools and equipment to be directly used in processing or refining tangible personal property

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5-4-2

Sec. 10. (a) In general, all purchases of tangible personal property by persons engaged in the processing or refining of tangible personal property are taxable. The exemption provided in this regulation *[45 IAC 2.2]* extends only to manufacturing machinery, tools, and equipment used in direct production. It does not apply to materials consumed in production or to materials incorporated into the tangible personal property produced. Additionally, the exemption provided in this regulation *[45 IAC 2.2]* extends to industrial processors. An industrial processor, as defined in IC 6-2.5-4-2, is one who:

(1) acquires tangible personal property owned by another person;

(2) provides industrial processing or servicing, including enameling or plating, on the property; and

(3) transfers the property back to the owner to be sold by that owner either in the same form or as a part of other tangible personal property produced by that owner in his business of manufacturing, assembling, constructing, refining, or processing.

(b) The state gross retail tax will not apply to sales of manufacturing machinery, tools, and equipment which are to be directly used by the purchaser in processing or refining tangible personal property.

(c) Purchases of manufacturing machinery, tools, and equipment to be directly used by the purchaser in processing or refining are exempt from tax; provided that such machinery, tools, and equipment are directly used in the production process; i.e., they have an immediate effect on the tangible personal property being processed or refined. The property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which processes or refines tangible personal property.

–EXAMPLES–

(1) Whiskey is produced in a process that begins with the grinding and fermenting of grain and the distillation of the fermented mash, continues further with the maturation of the distilled alcohol and with the blending of individual whiskeys, and ends with the bottling, labeling, and packaging of the whiskey prior to shipment to customers. Because of the functional interrelationship of the various steps and the flow of the work-in-process, the total production process comprised of such activities is integrated.

(2) The following types of equipment constitute essential and integral parts of the integrated production process and are, therefore, exempt. The fact that such equipment is built in a manner to service various pieces of exempt equipment, as an alternative to building the equipment into each of the pieces of exempt machinery, is not determinative.

(A) Pumps used to circulate cooling water through exempt condensers in the distillery.

(B) Chemicals used to treat the water used in the production of whiskey to ensure that the water is pure or to prevent scale buildup in the boilers and pipes.

(C) Equipment used to pulverize coal prior to being fed into the exempt boiler used to generate steam in the distillation process.

(D) A bottling and packaging process, which includes equipment such as case and bottle conveyors used during the filling operations, equipment to fill the bottles with product and to place labels on the bottles, and case filling equipment and case palletizers. The exempt production process begins after the bottles are introduced onto the bottle conveyors for the filling step of production and ends with the final packaging of the product onto the case palletizers.

(3) Because of the lack of an essential and integral relationship with the integrated production process in Example (1), the following types of equipment are not exempt:

(A) Equipment and furnishings located in the administrative offices of the plant.

(B) Equipment used for research and development of new products.

(C) Equipment used periodically to test the purity of the water in on-site deep wells which supply the plant's water requirements.

(D) Racks on which cases of empty bottles are stored prior to their introduction into the bottling and packaging system.

(E) The depalletizer used to strip pallets from cases containing empty bottles and unscramblers used to move empty

bottles out of cases and onto the production line.

(d) Pre-processing and post-processing activities. "Direct use" begins at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the processing or refining has altered the item to its completed form, including packaging, if required.

(e) Storage equipment. Tangible personal property used in or for the purpose of storing raw material, work in process, semi-finished or finished goods is subject to tax except for temporary storage equipment necessary for moving materials being processed or refined from one (1) production step to another.

(1) Temporary storage. Tangible personal property used in or for the purpose of storing work-in-process or semi-finished goods is not subject to tax if the work-in-process or semi-finished goods are ultimately or completely produced for resale and are, in fact, resold.

(2) Storage facilities or containers for finished goods after completion of the production process are subject to tax.

(f) Transportation equipment.

(1) Tangible personal property used for moving raw materials to the plant prior to entrance into the production process is taxable.

(2) Tangible personal property used for moving finished goods from the plant after completion of the processing or refining process is subject to tax.

(3) Transportation equipment used to transport work in process or semi-finished material to or from storage is not subject to tax if such equipment is used to transport work-in-process or semi-finished materials within the production process.

(4) Transportation equipment used to transport work in process or semi-finished goods between plants, however, is taxable, if the plants are not a part of the same essential and integrated production process.

–EXAMPLES–

(1) Transportation equipment, including trucks, conveyors, forklifts, and specialized barrel movers used to move whiskey barrels to, within, and from a maturation warehouse as transportation of work-in-process, is exempt.

(2) Transportation equipment used to move barrels of matured and blended whisky *[sic.]* from a storage warehouse to trucks for shipment to customers is taxable.

(g) "Have an immediate effect on the tangible personal property being processed or refined." Machinery, tools, and equipment used during processing or refining which have an immediate effect upon the tangible personal property being processed or refined are exempt from tax. Component parts of an exempt unit of machinery and equipment, which unit has an immediate effect on the article being produced, are exempt if such components are an integral part of the manufacturing unit. The fact that particular property may be considered essential to the conduct of the business of manufacturing because its use is required either by law or by practical necessity does not, of itself, mean that the property "acts upon and has an immediate effect on the tangible personal property being processed or refined". Instead, in addition to being essential for one of the above reasons, the property must also be an integral part of an integrated process which produces tangible personal property.

(h) Maintenance and replacement equipment.

(1) Machinery, tools, and equipment used in the normal repair and maintenance of machinery used in processing or refining which are predominantly used to maintain processing or refining machinery are subject to tax.

(2) Replacement parts, used to replace worn, broken, inoperative, or missing parts or accessories on exempt machinery and equipment, however, are exempt from tax.

(i) Testing and inspection. Machinery, tools, and equipment used to test and inspect the product are taxable, unless such machinery, tools, and equipment are used as part of the production process.

(j) Managerial, sales, and other nonoperative activities. Machinery, tools, and equipment used in managerial sales, research and development or other nonoperational activities are not directly used in processing or refining and, therefore, are subject to tax. This category includes, but is not limited to machinery, tools, and equipment used in any of the following activities: management and administration; selling and marketing; exhibition of manufactured or processed products; safety or fire prevention, equipment which is not essential and integral to the production process; space heating; ventilation and cooling for general temperature control; illumination; heating equipment for general temperature control; and shipping and loading.

(k) Definitions. Processing or refining is defined as the performance by a business of an integrated series of operations which places tangible personal property in a form, composition, or character different from that in which it was acquired. The change in form, composition, or character must be a substantial change. Operations such as distilling, brewing, pasteurizing, electroplating, galvanizing, anodizing, impregnating, cooking, heat treating, and slaughtering of animals for meal or meal products are illustrative of the types of operations which constitute processing or refining, although any operation which has such a result may be processing

or refining. A processed or refined end product, however, must be substantially different from the component materials used.

(l) Energy equipment.

(1) Equipment used to modify energy purchased from public utilities for the production process is exempt if the equipment is used to modify the utilities for use by exempt equipment.

(2) Equipment used to create energy that could otherwise be purchased exempt form *[sic.]* a public utility for use by exempt equipment is exempt.

(3) When any equipment qualifies as essential and integral to the production process and also is used in an alternative nonessential and/or non-integral manner, the exemption shall only apply to the percentage (%) of use of the equipment used in the exempt manner.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-3(030); filed Dec 1, 1982, 10:35 am: 6 IR 34; filed Aug 6, 1987, 4:30 pm: 10 IR 2630)

45 IAC 2.2-5-11 Sales of tangible personal property used in the direct production of manufacturing or agricultural machinery, tools and equipment

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5-5-2; IC 6-2.5-5-3

Sec. 11. (a) The state gross retail tax shall not apply to sales of tangible personal property to be directly used by the purchaser in the direct production or manufacture of any manufacturing or agricultural machinery, tools, and equipment described in IC 6-2.5-5-2 or 6-2.5-5-3 *[IC 6-2.5-5-3]*.

(b) The exemption provided in this regulation *[45 IAC 2.2]* extends only to tangible personal property directly used in the direct production of manufacturing or agricultural machinery, tools, and equipment to be used by such manufacturer or producer.

(c) The state gross retail tax shall not apply to purchases of tangible personal property to be directly used by the purchaser in the production or manufacturing process of any manufacturing or agricultural machinery, tools, or equipment, provided that the machinery, tools, and equipment are directly used in the production process; i.e., they have an immediate effect upon the article being produced or manufactured. The property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

(d) For the application of the rules *[subsections]* above, refer to Regs. 6-2.5-5-3 *[45 IAC 2.2-5-8 through 45 IAC 2.2-5-10]* with respect to tangible personal property used directly in the following activities: pre-production and post-production activities; storage; transportation; tangible personal property which has an immediate effect upon the article produced; maintenance and replacement; testing and inspection; and managerial, sales, and other nonoperational activities.

(e) Energy equipment.

(1) Equipment used to modify energy purchased from public utilities for the production process is exempt if the equipment is used to modify the utilities for use by exempt equipment.

(2) Equipment used to create energy that could otherwise be purchased exempt from a public utility for use by exempt equipment is exempt.

(3) When any equipment qualifies as essential and integral to the production process and also is used in an alternative nonessential and/or non-integrated manner, the exemption shall only apply to the percentage (%) of use of the equipment used in the exempt manner.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-4(010); filed Dec 1, 1982, 10:35 am: 6 IR 35; filed Aug 6, 1987, 4:30 pm: 10 IR 2632)

45 IAC 2.2-5-12 Sales of tangible personal property directly consumed in manufacturing, processing, refining or mining

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 12. (a) The state gross retail tax shall not apply to sales of any tangible personal property consumed in direct production by the purchaser in the business of producing tangible personal property by manufacturing, processing, refining, or mining.

(b) The exemption provided by this regulation *[45 IAC 2.2]* applies only to tangible personal property to be directly consumed in direct production by manufacturing, processing, refining, or mining. It does not apply to machinery, tools, and equipment used in direct production or to materials incorporated into the tangible personal property produced.

(c) The state gross retail tax does not apply to purchases of materials to be directly consumed in the production process or in mining, provided that such materials are directly used in the production process; i.e., they have an immediate effect on the article being produced. The property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

(d) Pre-production and post-production activities.

(1) Direct consumption in the production process begins at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the production process has altered the item to its completed form, including packaging, if required.

(2) "Direct use in mining" begins with the drilling of the shaft or well or the first removal of overburden in surface mining or quarrying. It ends when the item being mined or extracted has been physically removed from the mine, well, or quarry.

(e) "Have an immediate effect upon the article being produced or mined." Purchases of materials to be consumed during the production or mining process are exempt from tax, if the consumption of such materials has an immediate effect upon the article being produced and mined, or upon machinery, tools, or equipment which are both used in the direct production or mining process and are exempt from tax under these regulations *[45 IAC 2.2]*.

(f) Other taxable transactions. Purchases of materials consumed in manufacturing, processing, refining, or mining activities beyond the scope of those described in subsection B above *[subsection (e) of this section]* are taxable. Such activities include post-production activities; storage step) *[sic.]*; maintenance, testing and inspection (except where in direct production); (except where essential and integral to the process system); management and administration; sales; research and development; exhibition of products; safety or fire prevention; space heating; ventilation and cooling equipment for general temperature control; illumination; shipping and loading.

(g) "Consumed" as used in this regulation *[45 IAC 2.2]* means the dissipation or expenditure by combustion, use, or application and does not mean or include the obsolescence, discarding, disuse, depreciation, damage, wear or breakage of tools, dies, equipment, machinery, or furnishings. *(Department of State Revenue; Ch. 5; Reg. 6-2.5-5-5.1(010); filed Dec 1, 1982, 10:35 am: 6 IR 35; filed Aug 6, 1987, 4:30 pm: 10 IR 2633)*

45 IAC 2.2-5-13 Sales of tangible personal property directly consumed in agriculture, horticulture, floriculture, or arboriculture

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 13. (a) The state gross retail tax shall not apply to sales of tangible personal property as a material which is to be directly consumed in direct production by the purchaser in the business of producing agricultural, horticultural, floricultural, or arboricultural commodities.

(b) General rule. Purchases of materials to be directly consumed by the purchaser in the business of producing tangible personal property are exempt from tax provided that such materials are directly used in the production process; i.e., they have an immediate effect upon the commodities being produced. Property has an immediate effect on the commodities being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

(c) Refer to Regs. 6-2.5-5-5.1(010)(7) *[45 IAC 2.2-5-12(g)]* for the definition of "consumed" as used in this regulation *[45 IAC 2.2]*.

(d) Refer to Regs. 6-2.5-5-1 *[45 IAC 2.2-5-1]* for the definition of "farmer" and "farming" as used in this regulation *[45 IAC 2.2]*.

(e) The term "farmer" will be used in this regulation *[45 IAC 2.2]* to signify both "farmers" and "other persons engaged in the business of producing food and agricultural commodities".

(f) "The business of producing tangible personal property by agriculture" means "farming" for purposes of interpreting this regulation *[45 IAC 2.2]*.

(g)(1) "Have an immediate effect upon commodities being produced". Purchases of materials to be consumed during production of commodities are taxable unless the consumption of such materials has an immediate effect upon either (1) the food or agricultural commodities being produced, or (2) machinery, tools, or equipment which are both used in direct production of commodities and are exempt from tax under these regulations *[45 IAC 2.2]*. The consumption of property has an immediate effect on the commodity being produced or on the machinery, tools, or equipment engaged in direct production of commodities if the consumption is an essential and integral part of an integrated process which produces food or an agricultural commodity.

(h) Other taxable transactions. Purchases of materials consumed in farming beyond the scope of those activities described in subsection (g) of this section are taxable. Such activities include, but are not limited to: pre-production activities; post-production activities; storage (except where it is an essential and integral part of an integrated production process); transportation (except where it is an essential and integral part of an integrated production process); maintenance; testing and inspection (except where it is an essential and integral part of an integrated production process); management and administration; sales; research and development; exhibition of products; safety and fire prevention; space heating; ventilation and cooling for general temperature control; illumination; shipping and loading. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-5.1(020); filed Dec 1, 1982, 10:35 am: 6 IR 36; filed Aug 6, 1987, 4:30 pm: 10 IR 2634)*

45 IAC 2.2-5-14 Material incorporated into tangible personal property produced for resale

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 14. (a) The state gross retail tax shall not apply to sales of any tangible personal property which is to be incorporated by the purchaser as a material or an integral part into tangible personal property produced for sale by such purchaser in the business of manufacturing, assembling, refining or processing.

(b) The exemption provided by this regulation *[45 IAC 2.2]* applies only to tangible personal property to be incorporated as a material or an integral part into tangible personal property produced for sale by a purchaser engaged in the business of manufacturing, assembling, refining or processing. This regulation *[45 IAC 2.2]* does not apply to persons engaged in producing tangible personal property for their own use.

(c) This regulation *[45 IAC 2.2]* does not exempt from tax tangible personal property to be used in production, such as supplies, parts, fuel, machinery, etc., refer to Regs. 6-2.5-5-5(010) and 6-2.5-5-5(020) (dealing with material consumed in direct production) for the application of those regulations to taxpayers engaged in the production of tangible personal property.

(d) The purchase of tangible personal property which is to be incorporated by the purchaser as a material or an integral part is exempt from tax. "Incorporated as a material or an integral part into tangible personal property for sale by such purchaser" means:

(1) That the material must be physically incorporated into and become a component of the finished product;

(2) The material must constitute a material or an integral part of the finished product; and

(3) The tangible personal property must be produced for sale by the purchaser.

(e) Application of general rule.

(1) Incorporation into the finished product. The material must be physically incorporated into and become a component part of the finished product.

(2) Integral or material part. The material must constitute a material or integral part of the finished product.

(3) The finished product must be produced for sale by the purchaser.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-6(010); filed Dec 1, 1982, 10:35 am: 6 IR 37)

45 IAC 2.2-5-15 Sales for resale

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 15. (a) The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose of reselling, renting or leasing, in the regular course of the purchaser's business, such tangible personal property in the form in which it is sold to such purchaser.

(b) General rule. Sales of tangible personal property for resale, rental or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased.

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value

to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-8(010); filed Dec 1, 1982, 10:35 am: 6 IR 37)

45 IAC 2.2-5-16 Wrapping materials and containers

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 16. (a) The state gross retail tax shall not apply to sales of nonreturnable wrapping materials and empty containers to be used by the purchaser as enclosures or containers for selling contents to be added, and returnable containers containing contents sold in a sale constituting selling at retail and returnable containers sold empty for refilling.

(b) In general the gross proceeds from the sale of tangible personal property in a transaction of a retail merchant constituting selling at retail are taxable. This regulation *[45 IAC 2.2]* provided an exemption for wrapping materials and containers.

(c) General rule. The receipt from a sale by a retail merchant of the following types of tangible personal property are exempt from state gross retail tax:

(1) Nonreturnable containers and wrapping materials including steel strap and shipping pallets to be used by the purchaser as enclosures for selling tangible personal property.

(2) Deposits for returnable containers received as an incident to a transaction of a retail merchant constituting selling at retail.

(3) Returnable containers sold empty for refilling.

(d) Application of general rule.

(1) Nonreturnable wrapping material and empty containers. To qualify for this exemption, nonreturnable wrapping materials and empty containers must be used by the purchaser in the following way:

(A) The purchaser must add contents to the containers purchased; and

(B) The purchaser must sell the contents added.

(2) Returnable containers sold at retail with contents. To qualify for this exemption, the returnable containers must be:

(A) Sold in a taxable transaction of a retail merchant constituting selling at retail; and

(B) Billed as a separate charge by the retail merchant to his customer. If there is a separate charge for such containers, the sale of the container is exempt from tax under this regulation *[45 IAC 2.2]*.

(3) Returnable containers sold empty. To qualify for this exemption the returnable container must be resold with the purpose of refilling. The sale of returnable containers to the original or first user thereof is taxable.

(e) Definitions.

(1) Returnable containers. As used in this regulation *[45 IAC 2.2]*, the term returnable container means containers customarily returned by the buyer of the contents for reuse as containers.

(2) Nonreturnable containers. As used in this regulation *[45 IAC 2.2]*, the term "nonreturnable containers" means all containers which are not returnable containers.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-9(010); filed Dec 1, 1982, 10:35 am: 6 IR 38)

45 IAC 2.2-5-17 Exempt accounts for utilities which furnish or sell electrical energy; steam or steam heating service

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 17. (a) Production Plant.

(1) Steam Production

310. Land and land rights.
311. Structures and improvements.
312. Boiler plant equipment
313. Engines and engine driven generators.
314. Turbogenerator units.

315. Accessory electric equipment.
316. Miscellaneous power plant equipment.

(2) Nuclear Production

320. Land and land rights.
321. Structures and improvements.
322. Reactor plant equipment.
323. Turbogenerator units.
324. Accessory electric equipment.
325. Miscellaneous power plant equipment.

(3) Hydraulic Production

330. Land and land rights.
331. Structures and improvements.
332. Reservoirs, dams and waterways.
333. Water wheels, turbines and generators.
334. Accessory electric equipment.
335. Miscellaneous power plant equipment.
336. Roads, railroads, and bridges.

(4) Other Production

340. Land and land rights.
341. Structures and improvements.
342. Fuel holders, producers and accessories.
343. Prime movers.
344. Generators.
345. Accessory electric-equipment.
346. Miscellaneous power plant equipment.

(b) Power Production Expenses

(1) Steam Power Generation

500. Operation supervision and engineering.
501. Fuel.
502. Steam expenses.
503. Steam from other sources.
504. Steam transferred–cr.
505. Electric expenses.
506. Miscellaneous steam power expenses.
507. Rents.
510. Maintenance supervision and engineering.
511. Maintenance of structures.
512. Maintenance of boiler plant.
513. Maintenance of electric plant.
514. Maintenance of miscellaneous steam plant.

(2) Nuclear Power Generation

517. Operation supervision and engineering.
518. Fuel.
519. Coolants and water.
520. Steam expenses.
521. Steam from other sources.
522. Steam transferred–cr.
523. Electric expenses.
524. Miscellaneous nuclear power expenses.
525. Rents.
528. Maintenance supervision and engineering.

529. Maintenance of structures and improvements.
530. Maintenance of reactor plant equipment.
531. Maintenance of electric plant.
532. Maintenance of miscellaneous nuclear plant.

(3) Hydraulic Power Generation

535. Operation supervision and engineering.
536. Water for power.
537. Hydraulic expenses.
538. Electric expenses.
539. Miscellaneous hydraulic power generation expenses.
540. Rents.
541. Maintenance supervision and engineering.
542. Maintenance of structures.
543. Maintenance of reservoirs, dams and waterways.
544. Maintenance of electric plant.
545. Maintenance of miscellaneous hydraulic plant.

(c) Power Production Expenses

(1) Other Power Generation

546. Operation supervision and engineering.
547. Fuel.
548. Generation expenses.
549. Miscellaneous other power generation expenses.
550. Rents.
551. Maintenance supervision and engineering.
552. Maintenance of structures.
553. Maintenance of generating and electric plant.
554. Maintenance of miscellaneous other power generation plant.

(2) Other Power Supply Expenses

555. Purchased power.
556. System control and load dispatching.
557. Other expenses.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-10(010); filed Dec 1, 1982, 10:35 am: 6 IR 38)

45 IAC 2.2-5-18 Exempt accounts for utilities which furnish or sell natural or artificial gas or mixtures

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 18. (a) Production Plant

(1) Manufactured Gas Production Plant

304. Land and land rights.
305. Structures and improvements.
306. Boiler plant equipment.
307. Other power equipment.
308. Coke ovens.
309. Producer gas equipment.
310. Water
311. Liquefied petroleum gas equipment.
312. Oil gas generating equipment.
313. Generating equipment–other processes.
314. Coal, coke, and ash handling equipment.
315. Catalytic cracking equipment.

316. Other reforming equipment.
317. Purification equipment.
318. Residual refining equipment.
319. Gas mixing equipment.
320. Other equipment.

(2) Natural Gas Production Plant

(A) Natural gas production and gathering plant.
325.1 Producing land.
325.2 Producing leaseholds.
325.3 Gas rights.
325.4 Rights-of-way.
325.5 Other land and land rights.
326. Gas well structures.
327. Field compressor station structures.
328. Field measuring and regulating station structures.
329. Other structures.
330. Producing gas wells–well construction.
331. Producing gas wells–well equipment.

(b) Gas Plant Accounts

(1) 332. Field lines.
333. Field compressor station equipment.
334. Field measuring and regulating station equipment.
335. Drilling and cleaning equipment.
336. Purification equipment.
337. Other equipment.

(2) Products Extraction Plant
340. Land and land rights.
341. Structures and improvements.
342. Extraction and refining equipment.
343. Pipe lines.
344. Extracted products storage equipment.
345. Compressor equipment.
346. Gas measuring and regulating equipment.
347. Other equipment.

(c) Storage Plant

(1) Underground Storage Plant
350.1 Land.
350.2 Leaseholds.
350.3 Storage rights.
350.4 Rights-of-way.
350.5 Gas rights.
351. Structures and improvements.
352. Wells.
353. Lines.
354. Compressor station equipment.
355. Measuring and regulating equipment.
356. Purification equipment.
357. Other equipment.

(2) Local Storage Plant
360. Land and land rights.
361. Structures and improvements.

362. Gas holders.
363. Other equipment.

(d) Production Expenses

(1) Manufactured Gas Production Expenses

(A) Steam Production

700. Operation supervision and engineering.
701. Operation labor.
702. Boiler fuel.
703. Miscellaneous steam expenses.
704. Steam transferred–cr.
705. Maintenance supervision and engineering.
706. Maintenance of structures and improvements.
707. Maintenance of boiler plant equipment.
708. Maintenance of other steam production plant.

(B) Manufactured Gas Production

710. Operation supervision and engineering.

Production labor and expenses.

711. Steam expenses.
712. Other power expenses.
713. Coke oven expenses.
714. Producer gas expenses.
715. Water gas generating expenses.
716. Oil gas generating expenses.
717. Liquefied petroleum gas expenses.
718. Other process production expenses.

Gas fuels. 719. Fuel under coke ovens.

720. Producer gas fuel.
721. Water gas generator fuel.

(e) Operation and Maintenance Expense Accounts

(1) 722. Fuel for oil gas.
723. Fuel for liquefied petroleum gas process.
724. Other gas fuels.

Gas raw materials.

725. Coal carbonized in coke ovens.
726. Oil for water gas.
727. Oil for oil gas.
728. Liquefied petroleum gas.
729. Raw materials for other gas processes.
730. Residuals expenses.
731. Residuals produced–cr.
732. Purification expenses.
733. Gas mixing expenses.
734. Duplicate charges–cr.
735. Miscellaneous production expenses.
736. Rents.
740. Maintenance supervision and engineering.
741. Maintenance of structures and improvements.
742. Maintenance of production equipment.

(2) Natural Gas Production Expenses

750. Operation supervision and engineering.
751. Production maps and records.

752. Gas wells expenses.
753. Field lines expenses.
754. Field compressor station expenses.
755. Field compressor station fuel and power.
756. Field measuring and regulating station expenses.
757. Purification expenses.
758. Gas well royalties.
759. Other expenses.
760. Rents.
761. Maintenance supervision and engineering.
762. Maintenance of structures and improvements.
763. Maintenance of producing gas wells.
764. Maintenance of field lines.
765. Maintenance of field compressor station equipment.
766. Maintenance of field mes. and reg. station equipment.
767. Maintenance of purification equipment.
768. Maintenance of drilling and cleaning equipment.
769. Maintenance of other equipment.

(f) Operation and Maintenance Expense Accounts

(1) Products Extraction

770. Operation supervision and engineering.
771. Operation labor.
772. Gas shrinkage.
773. Fuel.
774. Power.
775. Materials.
776. Operation supplies and expenses.
777. Gas processed by others.
778. Royalties on products extracted.
779. Marketing expenses.
780. Products purchased for resale.
781. Variation in products inventory.
782. Extracted products used by the utility–cr.
783. Rents.
784. Maintenance supervision and engineering.
785. Maintenance of structures and improvements.
786. Maintenance of extraction and refining equipment.
787. Maintenance of pipe lines.
788. Maintenance of extracted products storage equipment.
789. Maintenance of compressor equipment.
790. Maintenance of gas measuring and regulating equipment.
791. Maintenance of other equipment.

(2) Exploration and Development Expenses

795. Delay rentals.
796. Nonproductive well drilling.
797. Abandoned leases.
798. Other exploration.

(3) Other Gas Supply Expenses

800. Natural gas well head purchases.
801. Natural gas field line purchases.
802. Natural gas gasoline plant outlet purchases.

803. Natural gas transmission line purchases.
804. Natural gas city gate purchases.
805. Other gas purchases.
806. Exchange gas.
807. Purchased gas expenses.
808. Gas withdrawn from underground storage–debit.
809. Gas delivered to underground storage–cr.
810. Gas used for compressor station fuel–cr.
811. Gas used for products extraction–cr.
812. Gas used for other utility operations–cr.
813. Other gas supply expenses.

(g) Underground Storage Expenses

(1) 814. Operation supervision and engineering.
815. Maps and records.
816. Wells expenses.
817. Lines expenses.

(h) Operation and Maintenance Expense Accounts

(1) Underground Storage Expenses
818. Compressor station expenses.
819. Compressor station fuel and power.
820. Measuring and regulating station expenses.
821. Purification expenses.
822. Exploration and development.
823. Gas losses.
824. Other expenses.
825. Storage well royalties.
826. Rents.
830. Maintenance supervision and engineering.
831. Maintenance of structures and improvements.
832. Maintenance of wells.
833. Maintenance of lines.
834. Maintenance of compressor station equipment.
835. Maintenance of measuring and regulating station equipment.
836. Maintenance of purification equipment.
837. Maintenance of other equipment.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-11(010); filed Dec 1 1982, 10:35 am: 6 IR 39)

45 IAC 2.2-5-19 Exempt accounts for utilities which furnish or sell water

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 19. (a) Source of Supply Plant

(1) 310. Land and land rights.
311. Structures and improvements.
312. Collecting and impounding reservoirs.
313. Lake, river and other intakes.
314. Wells and springs.
315. Infiltration galleries and tunnels.
316. Supply mains.
317. Other water source plant.

(b) Pumping Plant

(1) 320. Land and land rights.
321. Structures and improvements.
322. Boiler plant equipment.
323. Other power production equipment.
324. Steam pumping equipment.
325. Electric pumping equipment.
326. Diesel pumping equipment.
327. Hydraulic pumping equipment.
328. Other pumping equipment.
(c) Pumping Expenses
(1) 620. Operation supervision and engineering.
621. Fuel for power production.
622. Power production labor and expenses.
623. Fuel or power purchased for pumping.
624. Pumping labor and expenses.
625. Expenses transferred–cr.
626. Miscellaneous expenses.
627. Rents.
630. Maintenance supervision and engineering.
631. Maintenance of power production equipment.
632. Maintenance of pumping equipment.
(d) Water Treatment Expenses
(1) 640. Operation supervision and engineering.
641. Chemicals.
642. Operation labor and expenses.
643. Miscellaneous expenses.
644. Rents.
650. Maintenance supervision and engineering.
651. Maintenance of structures and improvements.
652. Maintenance of water treatment equipment.
(e) Water Treatment Plant
(1) 330. Land and land rights.
331. Structures and improvements.
332. Water treatment equipment.
(f) Source of Supply Expenses
(1) 600. Operation supervision and engineering.
601. Operation labor and expenses.
602. Purchased water.
603. Miscellaneous expenses.
604. Rents.
610. Maintenance supervision and engineering.
611. Maintenance of structures and improvements.
612. Maintenance of collecting and impounding reservoirs.
613. Maintenance of lakes, river and other intakes.
614. Maintenance of wells and springs.
615. Maintenance of infiltration galleries and tunnels.
616. Maintenance of supply mains.
617. Maintenance of miscellaneous water source plant.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-12(010); filed Dec 1, 1982, 10:35 am: 6 IR 41)

45 IAC 2.2-5-20 Exempt accounts for utilities which furnish or sell telephone services

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 20. (a) Central Office Equipment

Aisle-lighting equipment.
Announcement equipment–time, weather forecast, etc.
Automatic message recording equipment.
Balconies for distributing frames.
Banks–connector, selector.
Batteries.
Battery cabinets.
Boards–floor alarm, power, test, service observing.
Building alterations, minor, such as opening and closing holes in ceilings, partitions, walls, and floors to permit installation of equipment, power conduit and wiring.
Cables.
Calculagraphs.
Call registers.
Carrier-current equipment.
Call registers.
Circuit breakers.
Covers for transmission power apparatus.
Desks and tables when equipped with central office telephone equipment.
Engines, including special foundations not a part of buildings.
Frame–alarm, connector, decoder, decoder connector, line finder, line switch, repeater, selector, sender, test.
Fuse boards.
Fuse panels.
Generators, including special foundations not a part of buildings.
Jumper wires.
Key indicator equipment.
Line concentrator equipment.
Line filters.
Loading coil.
Loudspeaker equipment.
Main and intermediate frames.
Meters.
Motors, including special foundations not a part of building.
Multiplex apparatus.
Operators' transmitters.
Operators' chairs.
Operators' head sets.
Permits and privileges and rights of way for installation of externally mounted central office equipment.
Platforms, not part of buildings.
Pole changers.
Power circuits for emergency use including payment for installation by others of circuits not owned.
Power panels.
Power plants.
Protectors.
Pulse machines and tone machines.
Radio transmitting and receiving equipment.
Rectifiers.

Register cabinets.
Relay racks and coil racks.
Relays.
Repeater sets.
Rheostats.
Ringing machines, including special foundations not a part of buildings.
Rolling ladders.
Submarine cable repeaters.
Switchboards and other electrical equipment used in operators' schools.
Switchboards–subscribers' "A" and "B" trunk, toll, dial system.
Tarpaulins.
Telegraph instruments and equipment.
Telephotographic equipment.
Teletypewriter switchboards and equipment.
Test boards.
Testing and routining *[sic.]* central office equipment prior to assignment to service.
Testing equipment and tools, central office.
Test tables.
Ticket holders.
Toll ticket carriers.
Traffic load counting equipment.
Turrets.
Water stills for battery service.

(b) Station Apparatus

Amplifying equipment.
Answering equipment.
Attendants' cabinets.
Attendants' desks.
Backboards.
Booths.
Code call units.
Code sending sets.
Coin collectors.
Data sets.
Desk sets, hand sets, and combined sets, including those used at main, extension, private branch exchange, and private line stations, etc. (This includes such sets used as operators' sets at large private branch exchanges and in central offices and operators' schools.
Directory stands or shelves.
Distributing frames.
Extension bells.
Facsimile equipment.
Hand set mountings.
Messenger, and similar signaling devices.
Mobile telephone equipment.
Operators' chairs.
Operators' head sets and transmitters.
Order receiving tables.
Order turrets.
Power equipment.
Printer-telegraph equipment.
Private branch exchange equipment–nonmultiple manual and cordless switchboards and dial equipment of types designed to

accommodate fewer than 100 lines and which cannot normally be expanded to more than 99 lines.
Program supply equipment–other than television.
Public address equipment.
Public telephone signs.
Station switching and signaling devices including apparatus cabinets, keys, key cabinets, and other devices used as parts of intercommunicating systems.
Subscriber sets.
Telegraph equipment.
Teletypewriter equipment, including switching equipment.

(c) Station Connections

The wires (or small cables) from the station apparatus to the point of connection with the general overhead or underground system or to the junction boxes where the house cable or other cable terminates. This includes circuits, carried by means of wire or small cables, extending to the cable terminal in cases where connection is made with a general cable system or to the point of connection with the aerial wire plant in cases where connection is made with a general wire system.
The wires (or small cables) used to connect station apparatus in the same building, such as main stations with extension stations, and stations of intercommunicating systems.
The wires (or small cables) used to connect private branch exchange switchboards or their distributing frames with terminal stations located in the same building.
The wires (or small cables) used to connect the various parts of a small private branch exchange, such as the cables or wires from distributing frames to switchboard.
The wires (or small cables) installed specifically to serve as trunk, batter, or generator circuits from a small private branch exchange to the point of connection with the permanent house or outside cables or wires.
Connecting blocks, ground wires, ground rods, station protectors, clamps, cleats, nails, screws and other material used in the installation of station apparatus and inside wiring and cabling.
Labor and other costs incurred in connection with station apparatus and station connection installations or additions thereto.
Brackets, bridle rings, insulators, knobs, span clamps, screws, sleeves, strand, tubes, and other material used in the installation of drop and block wires; trimming trees and other costs incurred in the installation of such wires; pipes or other protective covering for underground service connections; and permits and privileges for construction.

(d) Large Private Branch Exchanges

Cables or wires from distributing frame to switchboard.
Dial system private branch exchanges of type designed to accommodate 100 or more lines or which can normally be expanded to 100 or more lines, including any nonmultiple manual switchboards used as attendants' positions in connection with such dial system exchanges.
Distributing frames.
Multiple manual switchboards.
Operators' chairs.
Operators' head sets and transmitters.
Power equipment, including special foundations.
Switching and signaling devices to large installations, such as certain key systems, for governmental agencies, including relay rack equipment, apparatus cabinets, key cabinets, key boxes, and other components of such systems.
Switching equipment at switching or relay centers of large private line teletypewriter systems.
Television program supply equipment and other television equipment on customers' premises except portable equipment subject to use in central offices.
Wires (or small cables used instead of wires) installed specifically to serve as trunk, battery, or generator circuits from a large private branch exchange to the point of connection with the permanent house or outside cables or wires.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-13(010); filed Dec 1, 1982, 10:35 am: 6 IR 42)

45 IAC 2.2-5-21 Sales of motor vehicles, trailers or aircraft, delivery for use outside of Indiana

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 21. The state gross retail tax shall not apply to sales of motor vehicles, trailers, and aircrafts, delivered in Indiana for immediate transportation to a destination outside of Indiana and for licensing or registration for use in another state, and not to be licensed or registered in Indiana. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-15(010); filed Dec 1, 1982, 10:35 am: 6 IR 44)*

45 IAC 2.2-5-22 Motor vehicles

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 22. For the imposition of the use tax refer to Regs. 6-2.5-3-2(b)(010) *[45 IAC 2.2-3-5]*. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-15(020); filed Dec 1, 1982, 10:35 am: 6 IR 44)*

45 IAC 2.2-5-23 Aircraft

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 23. For the imposition of the use tax refer to Regs. 6-2.5-3-2(b)(020) *[45 IAC 2.2-3-5]*. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-15(030); filed Dec 1, 1982, 10:35 am: 6 IR 44)*

45 IAC 2.2-5-24 Sales to Indiana and its instrumentalities

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 24. (a) As used in this rule, "predominantly for use in the performance of a governmental function" means that the property acquired will be used for more than fifty percent (50%) for the performance of a governmental function.

(b) The state gross retail tax shall not apply to sales to the state of Indiana, its agencies and instrumentalities, all counties, townships, and municipal corporations, their respective agencies and instrumentalities, and all other state governmental entities and subdivisions of tangible personal property and public utility services and commodities predominantly for use in the performance of governmental functions.

(c) Purchases by all state governmental agencies of tangible personal property, public utility services, and commodities are exempt from the gross retail tax, provided such purchases are used predominantly in the performance of governmental functions. This exemption applies only to those purchases which are directly invoiced to the governmental entity and paid out of government funds.

(d) Purchases must be predominantly for use in performance of governmental functions. Purchases of tangible personal property, public utility services, and commodities by the state or subdivisions thereof are exempt from gross retail tax provided the items purchased are predominantly used in the performance of governmental functions.

(e) Purchases must be invoiced directly to the governmental entity and paid out of governmental funds. Purchases of tangible personal property, public utility services, and commodities by the state or a subdivision thereof are exempt from gross retail tax, provided the purchases are invoiced directly to the governmental entity and paid for out of government funds. Purchases which are for use by the governmental entity, but which are not invoiced directly to the state or subdivision or are not paid for out of governmental funds, are subject to the gross retail tax.

(f) Purchases of tangible personal property to be incorporated into improvements to real estate owned by a governmental unit by contractors under a contractual obligation with a governmental entity of tangible personal property incorporated into real property used for a governmental purpose are exempt from the gross retail tax. However, purchases of machinery, tools, forms, and supplies which are used in the construction but are not incorporated into the structure are subject to tax.

(g) All purchases of public utility services used predominantly for governmental functions by the state or qualified subdivisions thereof are exempt. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-16(010); filed Dec 1, 1982, 10:35 a.m.: 6 IR 44; filed Dec 11, 1992, 5:00 p.m.: 16 IR 1366)*

45 IAC 2.2-5-25 Government agencies and units purchases; application of sales tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 25. (a) There is not a blanket exemption from the sales tax for purchases by governmental agencies and units. It provides that only the purchase of tangible personal property used by the governmental agency in connection with a governmental function may be purchased exempt from sales tax.

(b) Purchases by a governmental agency or subdivision to be used in connection with or for a proprietary activity are subject to the sales tax.

(c) Proprietary activities by governmental agencies and subdivisions include:

(1) Activities in connection with the sale of tangible personal property, such as college book stores, food services, concessions, etc.

(2) Activities in connection with the rental of tangible personal property made to the general public.

(d) In every case in which a governmental agency engages in a proprietary type activity as defined above, the agency must pay sales tax on the purchase of all tangible personal property used in connection therewith.

(e) The construction of buildings and structures for use in proprietary activities such as concession stands, is subject to sales tax on the tangible personal property incorporated therein.

(f) Governmental agencies should refer to the gross income tax regulations and instructions for other examples of proprietary type activities. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-16(020); filed Dec 1, 1982, 10:35 am: 6 IR 45)*

45 IAC 2.2-5-26 Sales of newspapers

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 26. (a) General rule. In general, sales of all publications irrespective of format are taxable. The exemption provided by this rule *[45 IAC 2.2]* is limited to sales of newspapers.

(b) Application of general rule. For purposes of the state gross retail tax, the term "newspaper" means only those publications which are:

(1) commonly understood to be newspapers;

(2) published for the dissemination of news of importance and of current interest to the general public, general news of the day, and information of current events;

(3) circulated among the general public;

(4) published at stated short intervals;

(5) entered or are qualified to be admitted and entered as second class mail matter at a post office in the county where published; and

(6) printed for resale and are sold.

(c) Publications which are primarily devoted to matters of specialized interest such as business, political, religious, or sporting matters may qualify for exemption if they also satisfy the criteria listed in subsection 26 of this rule *[subsection (b) of this section]*.

(d) Magazines, periodicals, journals, bulletins, advertising supplements, handbills, circulars, or the like are not newspapers until distributed as a part of a publication which is a newspaper within the meaning of this rule *[45 IAC 2.2]*.

(1) Magazines are not construed to be newspapers. The retail sales of all magazines and periodicals are subject to the sales tax. The sale of magazines by subscription is subject to sales tax without regard to the price of a single copy, and sales tax must be collected by the seller from the person who subscribes to the magazine on the full subscription price.

(2) For purposes of the state gross retail tax, the term "newspaper" shall include advertising inserts. Advertising inserts shall mean only those publications which are:

(A)(i) produced for a person by a private printer and delivered to the newspaper publishers, or

(ii) produced and printed by a newspaper publisher, or

(iii) produced and printed by a person and delivered to the newspaper publisher, and

(B) inserted by the newspaper publisher into the newspapers and distributed along with the newspapers.

Any distribution not meeting the above test does not qualify for the newspaper insert exemption. Examples of items distributed with a newspaper that do not qualify for the newspaper insert exemption include: gum, shampoo, and detergent samples.

(e) Publications issued monthly, bimonthly, or at longer or irregular intervals are generally not considered to be newspapers.

(f) Racing forms and tip sheets are not newspapers.

(g) A preponderance of advertising, lack of authorization to carry legal advertising, or lack of a masthead setting forth the publisher, editor, circulation, and place of publication are characteristics of publications other than newspapers.

(h) For exemptions pertaining to purchases and expenses of newspaper publishers, refer to Regs. 6-2.5-5-3 *[45 IAC 2.2-5-8 through 45 IAC 2.2-5-10]*, Regs. 6-2.5-5.1 *[45 IAC 2.2-5-12 through 45 IAC 2.2-5-13]* and Regs. 6-2.5-5-6 *[45 IAC 2.2-5-14]*. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-17(010); filed Dec 1, 1982, 10:35 am: 6 IR 45; filed Aug 6, 1987, 4:30 pm: 10 IR 2635)*

45 IAC 2.2-5-27 Medical exemptions; definitions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 27. (a) The term "person licensed to issue a prescription" shall include only those persons licensed or registered to fit and/or dispense such devices.

(b) Definition: The term "prescribed" shall mean the issuance by a person described in paragraph 1 of this regulation *[subsection (a) of this section]* of a certification in writing that the use of the medical equipment supplies and devices is necessary to the purchaser in order to correct or to alleviate a condition brought about by injury to, malfunction of, or removal of a portion of the purchaser's body. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-18(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 46)*

45 IAC 2.2-5-28 Medical equipment, supplies and devices; exemptions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 28. (a) Sales of artificial limbs which are prescribed by a person licensed to issue the prescription are exempt from sales and use tax.

(b) The sale to the user of orthopedic devices prescribed by a person licensed to issue the prescription are exempt from sales and use tax.

(c) For purposes of the state gross retail tax orthopedic devices are designed to correct deformities and/or injuries to the human skeletal system including the spine, joints, bones, cartilages, ligaments and muscles.

(d) The sale to the user of dental prosthetic devices prescribed by a person licensed to issue the prescription are exempt from sales and use tax.

(e) For the purposes of the state gross retail tax, dental prosthetic devices are devices used for the replacement of missing teeth, as by bridges or artificial dentures.

(f) The sale to the user of eye glasses or contact lenses prescribed by one licensed to do so is exempted from sales tax. The exemption to the patient applies whether the item is sold by the practitioner or by a dispensing optician.

(g) The sale to the user of medical equipment, supplies, or devices prescribed by one licensed to issue such a prescription are exempt from sales and use tax.

(h) The term "medical equipment, supplies or devices", as used in this paragraph, are those items, the use of which is directly required to correct or alleviate injury to malfunction of, or removal of a portion of the purchaser's body. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-18(a)(020); filed Dec 1, 1982, 10:35 am: 6 IR 46)*

45 IAC 2.2-5-29 Medical equipment, supplies and devices; rental

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 29. (a) Rentals of medical equipment, supplies, and devices, described in Regulation 6-2.5-5-18(a)(020) *[45 IAC 2.2-5-28]* are exempt from the state gross retail tax if the rentals are prescribed by a person licensed to issue the prescription.

(b) The terms "person licensed to issue prescription" and "prescribed" are defined in Regs. 6-2.5-5-18(a)(010)(I) and (2) *[45 IAC 2.2-5-27]*. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-18(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 46)*

45 IAC 2.2-5-30 Hearing aids; sales

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 30. (a) The sale to the user of hearing aids fitted or dispensed by one licensed or registered to do so is exempt from sales tax.

(b) The term "hearing aid" is defined as any instrument worn on the human body, designed for aiding, improving or correcting defective human hearing.

(c) The term "one licensed or registered to do so" shall include only those persons licensed or registered to fit and/or dispense such devices. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-18(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 47)*

45 IAC 2.2-5-31 Hearing aids; sales of parts, attachments or accessories

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 31. The exempt sale of parts and accessories for hearing aids may be made by persons other than those licensed for the fitting and dispensing of hearing aids as well as those so licensed or registered. The exempt use of any part or accessory, which is not designed and sold exclusively for use as a part of a hearing aid, should be evidenced by an exemption certificate certifying its use as a part of a hearing aid. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-18(c)(020); filed Dec 1, 1982, 10:35 am: 6 IR 47)*

45 IAC 2.2-5-32 Devices used to administer insulin; exemption

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 32. Sales of syringes or other instruments equipment or devices used to administer insulin are exempt from the gross retail tax. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-18(e)(010); filed Dec 1, 1982, 10:35 am: 6 IR 47)*

45 IAC 2.2-5-33 Prescription drugs; sales

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 33. (a) The state gross retail tax shall not apply to the sales of drugs dispensed by a registered pharmacist upon the order of a practitioner licensed to prescribe, dispense, and administer drugs to human beings or animals in the course of his professional practice.

(b) In general, all sales of tangible personal property by a retail merchant including pharmacists, hospitals, and drug stores are taxable. This exemption applies only to sales of certain drugs.

(c) General rule: Sales of drugs are exempt from tax provided:

(1) The drug is dispensed by a licensed pharmacist; and

(2) The drug is prescribed by a practitioner who is licensed to prescribe, dispense and administer drugs for human beings and animals; or

(3) The drug is sold by a practitioner licensed to prescribe, dispense and administer drugs to human beings.

(d) Sales by a retail merchant (pharmacy, hospital, etc.) for human use or consumption of aspirin, common cold pills, ordinary cough medicine and other drugs which are purchased without prescriptions are not exempt under this regulation *[45 IAC 2.2]*.

(e) Sales of drugs prescribed by a veterinarian or other practitioner not licensed to prescribe drugs for human use are not exempt under this regulation *[45 IAC 2.2]*. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-19(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 47)*

45 IAC 2.2-5-34 Insulin, oxygen, blood and blood plasma; sales

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 34. Sales of insulin, oxygen, blood and blood plasma are exempt from the state gross retail tax only when used for medical purposes. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-19(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 47)*

45 IAC 2.2-5-35 Sales of drugs to doctors and other licensed practitioners

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 35. (a) In general, all purchases of tangible personal property by a licensed practitioner are subject to gross retail tax. This exemption is limited to sales of certain drugs, insulin, oxygen, blood and blood plasma.

(b) Sales to licensed practitioners, of drugs which may be sold only on a prescription are exempt from the gross retail tax if the practitioner buys the drugs for direct consumption in the course of rendering professional services.

(c) Sales to licensed practitioners of insulin, oxygen, blood, or blood plasma are exempt from the gross retail tax if the practitioner buys such items for direct consumption in the course of rendering professional service. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-19(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 47)*

45 IAC 2.2-5-36 Licensed practitioners; purchases

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 36. (a) The gross retail tax shall apply to the following purchase transactions made by licensed practitioners:

(1) All office furniture, equipment and supplies.
(2) Drugs of a type not requiring a prescription, when not purchased for resale.
(3) Surgical instruments, equipment and supplies.
(4) Bandages, splints, and all other medical supplies consumed in professional use.
(5) X-Ray, diathermy, diagnostic equipment, or any other apparatus used in the practice of surgery or medicine.

(b) The purchase of items for resale by the physician or surgeon. In order to resell items the practitioner must be licensed as a retail merchant, and must quote the selling price of any items separately from the charge for professional service. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-19(c)(020); filed Dec 1, 1982, 10:35 am: 6 IR 48)*

45 IAC 2.2-5-37 Definitions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 37. (a) "Licensed practitioner": For purposes of this regulation *[45 IAC 2.2]* a "licensed practitioner" is a doctor, dentist, veterinarian or other practitioner licensed to prescribe, dispense and administer drugs to human beings or animals in the course of their professional practice.

(b) "Directly consumed in the course of rendering professional services": For purposes of this regulation *[45 IAC 2.2]*, "directly consumed in the course of rendering professional services" means the administration of prescription drugs, insulin, oxygen, blood and blood plasma by the licensed practitioner, or his agent. Consumed in professional use includes the furnishing of such drugs as a part of a single charge for professional service. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-19(c)(030); filed Dec 1, 1982, 10:35 am: 6 IR 48)*

45 IAC 2.2-5-38 Food for human consumption; exemptions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 38. The gross retail tax act exempts food for human consumption. Primarily the exemption is limited to sales by grocery stores, supermarkets, and similar type businesses of items which are commonly known as grocery food. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-20(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 48)*

45 IAC 2.2-5-39 Food for human consumption; exemption examples

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 39. (a) The gross retail tax act specifies the items which constitute tax exempt food for human consumption.

(b) A number of items normally sold by grocery stores, supermarkets, and similar type of businesses are classified in this regulation *[45 IAC 2.2]* under the heading "nontaxable items". These examples are for illustrative purposes and are not intended to be all-inclusive.

"NONTAXABLE ITEMS"

Baby Foods
Bakery Products
Baking Soda
Bouillon Cubes
Cereal & Cereal Products
Chocolate (for cooking purposes only)
Cocoa
Coconut
Coffee & Coffee Substitutes
Condiments
Cookies
Crackers
Dehydrated Fruit & Vegetables
Diet Foods
Eggs & Egg Products
Extracts, Flavoring as an Ingredient of Food Products
Fish & Fish Products
Flour
Food Coloring
Fruit & Fruit Products, including Fruit Juices
Gelatin
Health Foods
Honey
Ice Cream, Toppings, and Novelties
Jams
Jellies
Ketchup
Lard
Marshmallows
Mayonnaise
Meat & Meat Products
Milk & Milk Products
Mustard
Nuts, including salted, but not chocolate or candy-coated
Oleomargarine
Olive Oil
Olives
Peanut Butter
Pepper
Pickles
Popcorn
Potato Chips
Powdered Drink Mixes (Presweetened or Natural)
Relishes
Salad Dressings and Dressing Mixes
Salt
Sauces
Sherbets
Shortenings
Soups
Spices
Sandwich Spreads
Sugar, Sugar Products, and Sugar Substitutes
Syrups
Tea
Vegetables & Vegetable Products (Excluding Salad Bars)
Vegetable Juices
Vegetable Oils
Yeast

Some items in the above categories will be subject to tax if they are sold in small quantities and, therefore, are prepared for immediate consumption. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-20(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 48; filed Aug 6, 1987, 4:30 pm: 10 IR 2636)*

45 IAC 2.2-5-40 Food not exempt

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 40. The gross retail tax act specifies items which do not constitute "food for human consumption" exempted by the Act *[IC 6-2.5]*. A number of items normally sold by grocery stores, supermarkets, and similar type businesses are classified in this regulation *[45 IAC 2.2]* under the heading "taxable items". These examples are for illustrative purposes and are not to be all-inclusive.

"TAXABLE ITEMS"

Alcoholic Beverages
Candy & Confectionery
Candied Apples
Caramel Coated Popcorn
Chewing Gum
Chocolate Covered Nuts
Cocktail (dry or liquid) Mixes
Dietary Supplements in any form
Household Supplies (Brooms, Mops, Etc.)
Ice
Liver Oils, such as Cod and Halibut
Lozenges
Nonprescription Medicines
Paper Products
Pet Foods and Supplies
Soap & Soap Products
Soft Drinks, Sodas & Similar Beverages
Tobacco Products
Tonics, Vitamins and other Dietary Supplements
Toothpaste
Water, including mineral, bottled carbonated & Soda

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-20(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 49)

45 IAC 2.2-5-41 Confectionary items

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 41. (a) Preparations of fruits, nuts, or popcorn in combination with chocolate, sugar, honey, candy, or other confectionary, unless sold for cooking purposes, are not considered exempt "food" items. The method used in packaging and distributing these preparations, including the kind and size of container used, will be considered in determining the primary use for which these preparations are sold.

(b) Chocolate commonly used for cooking purposes is considered exempt "food" within the meaning of this regulation *[45 IAC 2.2]*. The method used in packaging and distributing chocolate, including the kind and size of container used, will be considered in determining the primary use for which it is sold. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-20(c)(020); filed Dec 1, 1982, 10:35 am: 6 IR 49)*

45 IAC 2.2-5-42 Soft drinks, sodas and similar beverages

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 42. Any "soft drink" which contains carbonated water is subject to tax. However, some other drinks which may not contain carbonated water but which are normally purchased for consumption out of "soft drink bottles or cans will also be subject to tax. This would include, for example, chocolate drinks. The term soft drinks" does not include fruit and vegetable juices. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-20(c)(030); filed Dec 1, 1982, 10:35 am: 6 IR 49)*

45 IAC 2.2-5-43 Food for immediate consumption

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 43. (a) Sales of food which ordinarily is sold for immediate consumption at or near the premises of the seller are taxable even though such food is sold on a "take-out" or "to go" order basis and is actually bagged, packaged, or wrapped and taken from the premises of the seller. Where and when the customer actually eats such food is immaterial. Accordingly, sales through a grocery store, salad bar, bakery, or delicatessen and by restaurants, cafeterias, lunch counters, drive-ins, roadside ice cream and refreshment stands, fish and chip places, fried chicken places, pizzerias, food and drink concessions, or similar facilities, of meals, sandwiches, hamburgers, hot dogs, french fries, fried chicken, fish and chips, pizza, potato salad, cole slaw, popcorn, sundaes, cones and cups of ice cream, milk shakes, soft drinks, and similar ready-to-eat food and beverage items are taxable regardless of whether sold by such establishments for consumption on the premises or on a "take-out" or "to go" basis.

(b) Any food which is cooked to the order of the purchaser, or food which is cooked and maintained at or near the cooking temperature prior to sale, or prepared food which is sold by the piece rather than by weight or for immediate consumption is taxable. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-20(c)(040); filed Dec 1, 1982, 10:35 am: 6 IR 49; filed Aug 6, 1987, 4:30 pm: 10 IR 2636)*

45 IAC 2.2-5-44 Combination business; sales of groceries and meals

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 44. Where a person operates a combination-type business at one location such as an eating place combined with a donut or pastry shop, sales by such retailer of nontaxable grocery items as described in this regulation *[45 IAC 2.2]* are nontaxable when sold for home consumption. The method used in distributing these items, including the kind and size of the order and the container used, will be considered in determining whether the items are sold for home consumption. For example, bulk sales of donuts or other assorted pastries, sales of whole pies or cakes and bulk sales of ice cream are nontaxable when sold for home consumption. However, individual orders (e.g., an order of ice cream, a single serving of pie or cake, or a single serving bakery item) are taxable regardless of whether sold for consumption on the premises or sold on a "take-out" basis for off-premises consumption. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-20(c)(050); filed Dec 1, 1982, 10:35 am: 6 IR 49; filed Aug 6, 1987, 4:30 pm: 10 IR 2637)*

45 IAC 2.2-5-45 Caterers

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 45. (a) The law provides that the sale of meals shall be taxable whether such meals are served on or off the premises of the retailer. Accordingly the sale of food or meals by caterers is subject to sales tax.

(b) The tax applies to the entire charge made by caterers for serving meals, food and drink, inclusive of charges for food, the use of dishes, silverware, glasses, chairs, tables, etc., used in connection with serving meals, and for labor of serving meals. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-20(c)(060); filed Dec 1, 1982, 10:35 am: 6 IR 50)*

45 IAC 2.2-5-46 School meals

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 46. (a) The state gross retail tax shall not apply to the furnishings of school meals to school children and school employees on school premises in all schools of grades one (1) through twelve (12).

(b) The fact that a school employs a private caterer to prepare and serve meals will not negate the exemption as long as the meals are served on school property and the caterer is merely acting as an agent for the school corporation.

(c) Sales of meals to persons other than students or employees are subject to the sales tax. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-22(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 50)*

45 IAC 2.2-5-47 School building materials

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5; IC 21-5-11; IC 21-5-12

Sec. 47. The state gross retail tax shall not apply to sales of tangible personal property incorporated or to be incorporated in a school building or school buildings being constructed by a lessor corporation in accordance with a lease executed under IC 21-5-11 (School Building Leasing) or IC 21-5-12 (School Corps. Authorized to Lease School Buildings). *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-23; filed Dec 1, 1982, 10:35 am: 6 IR 50)*

45 IAC 2.2-5-48 Gross receipts exempt from gross income tax; U.S. and Indiana tax collection agents

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-3-5; IC 6-2.5

Sec. 48. (a) The state gross retail tax shall not apply to such part of the gross income from transactions constituting selling at retail as is exempt from the gross income tax under the provisions of IC 6-2.1-3-5.

(b) The state gross retail tax shall not apply to taxes received or collected by the taxpayer as agent for the state of Indiana and/or the United States of America. No person shall be considered as an agent for the state of Indiana and/or the United States of America under this regulation *[45 IAC 2.2]* unless he has been explicitly designated as a collecting agent in the statute under the terms of which the tax is imposed. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-24(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 50)*

45 IAC 2.2-5-49 Sales to the United States

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-3-2; IC 6-2.5

Sec. 49. (a) The gross retail tax shall not apply to such part of the gross income from transactions constituting selling at retail as is exempt from the gross income tax under the provisions of IC 6-2.1-3-2.

(b) The state gross retail tax shall not apply to so much of the gross receipts of any transaction from sales to the United States Government, but only to the extent to which the state of Indiana is prohibited from taxing such gross receipts by the Constitution of the United States. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-24(a)(020); filed Dec 1, 1982, 10:35 am: 6 IR 50)*

45 IAC 2.2-5-50 Selling at retail; gross income

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 50. The state gross retail tax shall not apply to such part of the gross income from transactions constituting selling at retail which is excise tax imposed under Section 4081 of the Internal Revenue Code. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-24(a)(030); filed Dec 1, 1982, 10:35 am: 6 IR 50)*

45 IAC 2.2-5-51 United States retailer's and manufacturer's excise taxes

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-3-6; IC 6-2.1-3-7; IC 6-2.5

Sec. 51. (a) The state gross retail tax shall not apply to such part of the gross income from transactions constituting selling at retail as is exempt from the gross income tax under the provisions of IC 6-2.1-3-6 and IC 6-2.1-3-7.

(b) The state gross retail tax shall not apply to so much of the gross receipts of any transaction from retailer's excise taxes imposed by the United States solely on the sale at retail of tangible personal property and collected by a retail merchant as a separate item in addition to the price of the property sold, and which is remitted by such retail merchant to the taxing authority. "Retailers' excise taxes imposed by the United States" includes manufacturer's excise tax imposed by the United States on motor vehicles, motor vehicle bodies and chassis, parts, and accessories therefore, tires, provided that such tax is separately stated and billed by the seller. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-24(a)(040); filed Dec 1, 1982, 10:35 am: 6 IR 50)*

45 IAC 2.2-5-52 Encumbrances on trade-ins

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-3-13; IC 6-2.5

Sec. 52. (a) The state gross retail tax shall not apply to such part of the gross income from transactions constituting selling at retail as is exempt from the gross income tax under the provisions of IC 6-2.1-3-13.

(b) The state gross retail tax shall not apply to so mush *[sic.]* of the gross receipts of any transaction from all amounts represented by an encumbrance of any kind on tangible personal property received by a retail merchant in reciprocal exchange for tangible personal property of like kind. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-24(a)(050); filed Dec 1, 1982, 10:35 am: 6 IR 51)*

45 IAC 2.2-5-53 Interstate commerce; sales

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-3-3; IC 6-2.5

Sec. 53. (a) The state gross retail tax shall not apply to such part of the gross income from transactions constituting selling at retail as is exempt from the gross income tax under the provisions of IC 6-2.1-3-3.

(b) Gross receipts derived from transactions which constitute "retail transactions" which the state of Indiana is prohibited from taxing by the Constitution of the United States of America are exempt from gross retail tax. Under this regulation *[45 IAC 2.2]*, this exemption is limited to gross receipts from transactions conducted in commerce between Indiana and other states of the United States, or between Indiana and foreign countries. Such sales commonly are referred to as "sales in interstate commerce" and Indiana is prohibited from taxing such sales by the United States Constitution. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-24(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 51)*

45 IAC 2.2-5-54 Delivery site

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 54. (a) Delivery to purchaser in Indiana. Sales of tangible personal property which are delivered to the purchaser in Indiana are subject to gross retail tax or use tax, except (see Regs. 6-2.5-5-15(020) *[45 IAC 2.2-5-22]*) for certain sales of motor vehicles and aircraft.

(b) Delivery to purchaser in a state other than Indiana. Sales of tangible personal property which are delivered to the purchaser in a state other than Indiana for use in a state other than Indiana are not subject to gross retail tax or use tax, provided the property is not intended to be subsequently used in Indiana.

(c) Delivery by common carriers.

(1) Delivery to common carrier in Indiana for shipment to another state by common carrier shall be deemed delivery to a purchaser in a state other than Indiana for purposes of applying the gross retail tax or use tax.

(2) Delivery to common carriers in a state other than Indiana for shipment to Indiana shall be deemed delivery to a purchaser in Indiana for purposes of applying the use tax.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-24(b)(020); filed Dec 1, 1982, 10:35 am: 6 IR 51)

45 IAC 2.2-5-55 Not-for-profit organizations; acquisitions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-3; IC 6-2.5

Sec. 55. (a) Sales to a qualified not-for-profit organization of tangible personal property or services used primarily in carrying out the not-for-profit purpose of the organization or in raising money for carrying on such purposes are exempt from the gross retail tax.

(b) In order to qualify for the sales tax exemption on purchases, as a qualified not-for-profit organization, the following conditions must prevail:

(1) The organization must be qualified by being named or described in IC 6-2.1-3-20, IC 6-2.1-3-21, or IC 6-2.1-3-22 which deals with fraternities, sororities, student cooperative housing organizations, etc. This includes not-for-profit organizations organized and operated exclusively for one (1) or more of the following purposes:

(A) Religious.
(B) Charitable.
(C) Scientific.
(D) Fraternal.
(E) Educational.
(F) Literary.
(G) Civic.

(2) Also included are the following specifically named not-for-profit organizations:

(A) Labor unions.
(B) Licensed hospitals.
(C) Churches.
(D) Monasteries.
(E) Convents.
(F) Cemetery associations.
(G) Public schools.
(H) Parochial schools.
(I) Pension trust.
(J) Business leagues.

(3) The organization is not operated predominantly for social purposes. The article purchased must be used for the same purpose as that for which the organization is being exempted. Purchases for the private benefit of any member of the organization or for any other individual, such as meals or lodging, are not eligible for exemption. Purchases used for social purposes are never exempt.

(4) The fact that an organization is being exempted by the federal government or by the state of Indiana for income tax purposes does not necessarily mean that a purchase made by the not-for-profit organization is exempt.

(c) Purchases of tangible personal property by a qualified not-for-profit organization used to raise funds to further the exempt purpose of the organization are exempt even if the resale of such property is not subject to tax. The following are examples:

(1) A qualified religious organization purchases envelopes which are distributed to members for use in making weekly contributions to the church. The purchase of the envelopes by the church is exempt because the envelopes will be used to raise funds for the qualified not-for-profit organization.

(2) A qualified hospital purchases advertising posters to be used in a fundraising drive for the hospital. The purchase of the posters is exempt from the state gross retail tax because the posters will be used to raise funds for the qualified not-for-profit organization.

(d) Purchases of tangible personal property or services used primarily in carrying out the not-for-profit purpose of the qualified organization are exempt from tax. This exemption will not apply if such property is primarily used for a purpose other than the not-for-profit purpose of the organization. As used in this section, "primarily used in carrying out the not-for-profit purpose" means that the item or service is used more than fifty percent (50%) of the time to further the organization's not-for-profit purpose. The following are examples:

(1) A religious organization acquired building materials to construct a new church. The purchase of such materials by the church is exempt since the new church will further the not-for-profit purpose of the organization. The fact that the church basement will occasionally be used for social events does not subject the purchase of construction materials to tax.

(2) A church sponsors a ski club for its teenage membership. The ski club purchases skis, boots, and poles to be used by the church ski club members on ski trips. These purchases are taxable because the skis, boots, and poles are used primarily to further the social purposes of the ski group and not the exempt purpose of the church.

(3) A fraternal lodge operated a golf club, a bowling alley, and a lounge where liquor is served. Purchases of property used in these facilities are taxable because the property is used for a purpose other than the not-for-profit fraternal purpose of the lodge. However, the purchase of ceremonial robes for use in fraternal meetings is exempt because the robes are used to further the not-for-profit purpose of the organization.

(4) Sales of meals at medical society meetings are taxable because the meals are provided for the convenience of the organization and its members. Such sales are taxable even when served in conjunction with a meeting which is furthering their not-for-profit purpose.

(e) A social organization will be deemed to exist for predominantly social purposes if more than fifty percent (50%) of its expenditures are for, or related to, social activities. Social activities include the following:

(1) Food and beverage services.

(2) Furnishing of sleeping rooms.

(3) Club rooms.

(4) Lounges.

(5) Recreational activities.

(6) Any other social activities.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-25(a)(010); filed Dec 1, 1982, 10:35 a.m.: 6 IR 51; filed Dec 11, 1992, 5:00 p.m.: 16 IR 1367)

45 IAC 2.2-5-56 Fraternities, sororities, and student cooperative housing organizations; acquisitions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-3-19; IC 6-2.5

Sec. 56. (a) The state gross retail tax exempts transactions occuring *[sic.]* after December 31, 1976, and involving tangible personal property or service, if the person acquiring the property or service:

(1) Is a fraternity, sorority, or student cooperative housing organization which is granted a gross income tax exempt under IC 6-2.1-3-19; and

(2) Uses the property or service to carry on its ordinary and usual activities and operations as a fraternity, sorority, or student cooperative housing organization.

(b) Purchases for the private benefit of any member of the organization or for any other individual are not eligible for exemption.

–EXAMPLE–

(1) A sorority purchases furniture for the sorority house. The state gross retail tax will not apply. The furniture is tangible personal property used by the sorority to carry on its ordinary and usual activities.

(2) A fraternity member purchases a television set for his own individual use in the fraternity house. The purchase would not be exempt. The fraternity member can not use the fraternity's exemption to purchase tangible personal property for his private benefit.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-25(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 52)

45 IAC 2.2-5-57 Not-for-profit organization; sales under 30 day rule

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 57. (a) The state gross retail tax shall not apply to sales by any qualified not-for-profit organization of tangible personal property for not more than thirty (30) days during any calendar year for the purpose of raising money to be used for carrying on the not-for-profit purpose of such organization.

(b) In general, the gross receipts from sales by not-for-profit organizations are taxable. This subsection exempts from tax the gross receipts from the sale of tangible personal property by a qualified not-for-profit organization in connection with certain fund-raising activities as described in this regulation *[45 IAC 2.2]*.

(c) The gross receipts from the sale or lease of tangible personal property by a qualified not-for-profit organization are exempt under this subsection if the sales are made to raise money to further the not-for-profit purpose of the organization and if the sales are conducted for not more than thirty days during any calendar year. Such sales may be made by all qualified not-for-profit organizations. The tangible personal property sold need not be related to the qualified purpose of the organization, provided such receipts are expended to further the exempt purpose of the organization.

(d) Any organization which makes such sales for thirty-one or more days during any calendar year is a retail merchant and, therefore, is subject to the state gross retail tax. (Refer to Regs. 6-2.5-5-26(b) *[45 IAC 2.2-5-58]* for exemption of certain sales by qualified not-for-profit organization which are not predominantly social.)

(e) Sales conducted for not more than thirty days. Each day during which any selling activities are conducted constitutes a "selling day" for purposes of determining whether a qualified not-for-profit organization has conducted sales for more than thirty days during any calendar year. The solicitation, acceptance, or receipts of a sales order during any day during more than thirty days during any calendar year, then all gross receipts from all sales made during the year are subject to tax. For purposes of applying these rules, the thirty days need not be consecutive.

–EXAMPLE–

(1) A church conducts a bake sale each Sunday after services. All gross receipts including the receipts collected during the first thirty selling days are subject to tax because the selling activities are conducted for more than thirty days during the calendar year.

(2) A hospital's women's auxiliary solicits orders for cookies during a three-month period. Orders are accepted at the point of solicitation but the cookies are delivered on the last day of the three-month solicitation period. These sales are taxable. Selling activities are conducted for more than thirty days during the calendar year because each day during which an order is solicited constitutes a selling date.

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(f) Furthering the not-for-profit purpose of the organization. The gross receipts from fund raising sales conducted for not more than thirty days are exempt only if such receipts are expended to further the not-for-profit purpose of the exempt organization. For purposes of this section, the payment of such receipts to offset the direct cost of the product sold will be considered an expenditure to further the not-for-profit purpose of the organization.

(g) Definition. Refer to Regulation 6-2.5-5-25(a)(010)(2) *[45 IAC 2.2-5-55(b)]* for the definition of a "qualified not-for-profit organization". *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-26(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 53)*

45 IAC 2.2-5-58 Not-for-profit organizations for educational, cultural or religious purposes; sales

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 58. (a) The state gross retail tax shall not apply to sales by qualified not-for-profit organizations of tangible personal property of a kind designated and intended primarily for the educational, cultural or religious purposes of such qualified not-for-profit organization and not used in carrying out a private or proprietary business.

(b) The gross receipts from each sale of tangible personal property by a qualified not-for-profit organization are exempt under this rule *[45 IAC 2.2]* only if:

(1) The nature of the property sold will further the educational, cultural or religious purposes of the organization; and

(2) The organization is not carrying on a private or proprietary business with respect to such sales.

(c) Furthering the educational, cultural or religious purpose. The primary purpose of the property sold must be to further the educational, cultural or religious purpose of the qualified not-for-profit organization.

–EXAMPLE–

(1) The sale of textbooks and supplies by a parochial, public or private not-for-profit school is exempt if made to students of the school in grades one through twelve. Such sales are primarily intended to further the educational purposes of the school.

(2) The sale of bibles, choir robes and prayer books by a religious organization is exempt. Such sales are primarily intended to further the religious purposes of the organization.

(3) The sale of meals by an art gallery is taxable. The meals are intended primarily for the convenience of visitors.

(4) The sale of textbooks and other educational materials by a secretarial school which is operated for profit is taxable. A profit-making educational enterprise is not a qualified not-for-profit organization under this regulation *[45 IAC 2.2]*.

(5) The sale of greeting cards by a church bookstore is taxable. Such sales are not primarily intended to further the religious purposes of the organization.

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(d) Qualified not-for-profit organization. This regulation *[45 IAC 2.2]* applies only to qualified not-for-profit organizations. For example, the sale of educational books by a social club is taxable. A predominantly social not-for-profit organization is not a qualified not-for-profit organization with respect to sales and use tax.

(e) Definition. Refer to Regulation 6-2.5-5-25(a)(010)(2) *[45 IAC 2.2-5-55(b)]* for the definition of a "qualified not-for-profit organization". *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-26(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 54)*

45 IAC 2.2-5-59 Not-for-profit organizations to improve skills of members; sales

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 59. (a) The state gross retail tax shall not apply to sales by qualified not-for-profit organizations of tangible personal property of a kind designed and intended to improve the skill or professional qualification of members of the organization for carrying on the work or practice of their trade, business or profession and not used in carrying on a private or proprietary business.

(b) The gross receipts from sales of tangible personal property by a qualified not-for-profit organization are exempt under this rule only if:

(1) The tangible personal property is sold exclusively to members and is designed and intended to improve the skill or professional qualification of such members; and

(2) The organization is not carrying on a private or proprietary business with respect to such sales.

(c) Designed and intended to improve the skill of professional qualification. The property sold to members of the organization must be designed and intended to improve the skills of such members.

–EXAMPLE–

(1) Sales by a qualified not-for-profit medical society to its members of technical booklets which provide medical information are exempt from tax. These technical booklets are intended to improve the professional qualifications of the members.

(2) Sales of meals at medical society meetings are taxable because the meals are provided for the convenience of the organization and its members. Such sales are taxable even when served in conjunction with a meeting where the technical booklets described in (1) of this section are sold.

(3) A professional society of certified public accountants publishes and sells technical booklets to students who are not members of the professional society. The sales are taxable because this exemption is limited to sales to members.

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(d) Qualified not-for-profit organizations. This regulation *[45 IAC 2.2]* applies only to not-for-profit organizations which are qualified not-for-profit organizations. For example, sales of instructional booklets on golf techniques by a country club are taxable. A country club is a predominantly social not-for-profit organization and not a qualified not-for-profit organization.

(e) Definitions. Refer to Regulation 6-2.5-5-25(a)(010)(2) *[45 IAC 2.2-5-55(b)]* for the definition of a "qualified not-for-profit organization". *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-26(b)(020); filed Dec 1, 1982, 10:35 am: 6 IR 54)*

45 IAC 2.2-5-60 Property not exempt

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 60. The state gross retail tax does not exempt the sale by any state or accredited college or university of books, stationery, haberdashery, supplies, and other property. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-26(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 55)*

45 IAC 2.2-5-61 Public transportation; acquisitions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 61. (a) The state gross retail tax shall not apply to the sale and storage or use in this state of tangible personal property which is directly used in the rendering of public transportation of persons or property.

(b) Definition: Public Transportation. Public transportation shall mean and include the movement, transportation, or carrying of persons and/or property for consideration by a common carrier, contract carrier, household goods carrier, carriers of exempt commodities, and other specialized carriers performing public transportation service for compensation by highway, rail, air, or water, which carriers operate under authority issued by, or are specifically exempt by statute or regulation from economic regulation of, the public service commission of Indiana, the Interstate Commerce Commission, the aeronautics commission of Indiana, the U.S. Civil Aeronautics Board, the U.S. Department of Transportation, or the Federal Maritime Commissioner; however, the fact that a company possesses a permit or authority issued by the P.S.C.I., I.C.C., etc., does not of itself mean that such a company is engaged in public transportation unless it is in fact engaged in the transportation of persons or property for consideration as defined above.

(c) In order to qualify for exemption, the tangible personal property must be reasonably necessary to the rendering of public transportation. The tangible personal property must be indispensable and essential in directly transporting persons or property.

(d) The following is a list of items which the department has determined to be necessary to the rendering of public transportation:

Roadway machinery and equipment;
Caboose and locomotive supplies such as fuses, lanterns, batteries, and flags;
Tariff publications;
Vehicles used for public transportation;
Communication equipment;
Equipment and items purchased to meet federal requirements;
All replacement parts, repair parts, and materials consumed by exempt equipment;
Tools and equipment used to repair and maintain rolling stock and track;
Vehicles used primary for transportation of track maintenance crews;
Items used for repairs and maintenance of such vehicles;
Items used for production of financial matters, insurance, schedules, routes, and rates;
Items used to provide customer stations, handle baggage, sell tickets;
Items used to keep vehicles clean and safe for the passengers.
Machine shop and truck tools;
Equipment related to the costruction *[sic.]* and operation of terminals;
Directories;
Gas storage facilities;
Caboose and locomotive compliments such as towels, masking tape, powders, cleaners, ice, water coolers, and bottles *[sic.]* water;
Cleaning supplies;
Employee uniforms;
Garage supplies.

(e) The following is a PARTIAL list of items which are not directly used or consumed in the rendering of public transportation and, therefore, are subject to tax:

Promotional expenses, matches, jackets, and promotional items given away to existing or potential customers, advertising to

the public, except the printing of schedules and routes.

Sales expenses, sales telephones, and related computer equipment used exclusively for sales activities such as marketing, sales projection, and costing. Such equipment used to handle actual ticket sales (i.e., at the reservation office) or to organize loads and dispatch trucks is exempt.

Office supplies, furniture, equipment, and related items for sales personnel executives including ground and lawn care, except grading required for the vehicles directly used in the rendering of public transportation.

Heating and air conditioning for separate, off-site executive headquarters is subject to tax.

Heating and air conditioning for reservation area, vehicle maintenance area, or switching yard control buildings is exempt.

(f) Pre- and post-transportation activity. The purchase, storage, or use of tangible personal property used for activities prior to or subsequent to the rendition of public transportation is subject to tax. For purposes of this regulation *[45 IAC 2.2]*, transportation means the movement, transporting, or carrying of persons or property from one place to another and includes loading and unloading of persons or property into or from transportation vehicles.

–EXAMPLES–

(1) Ramps used by travelers for boarding and departing from airplanes are exempt because the ramps are directly used in rendering public transportation.

(2) Docks possessed by a carrier and used for loading and unloading vehicles operated in rendering public transportation are exempt.

(g) Storage facilities and equipment. In general, storage facilities and associated equipment for exempt vehicles are exempt. Additionally, tangible personal property directly used for temporarily storing persons or property being transported is exempt from tax because temporary storage is considered to be an integral part of rendering transportation.

–EXAMPLES–

(1) Airline passengers' luggage is held in a baggage room until luggage can be loaded on the aircraft. The racks, carts, bins, and other baggage room equipment are exempt from tax.

(2) A carrier receives property from another carrier and temporarily stores such property prior to loading it for further shipment. Equipment used to handle such in transit property is exempt from tax.

(3) Construction materials incorporated into grain elevators or warehouses used for storage are not exempt under this regulation *[45 IAC 2.2]*. Similarly, fuel storage tanks at a truck terminal are exempt.

(h) Repair and maintenance facilities and equipment.

(1) Machinery, tools, equipment, and facilities used for repair and maintenance of tangible personal property directly used in public transportation are not subject to tax.

–EXAMPLE–

Chain hoists, tire spreaders, welding equipment, drills, sanders, wrenches, paint brushes, sprayers, garages, repair shops, wreckers.

(2) Replacement parts used to replace worn, broken, inoperative, or missing parts or accessories on exempt property are exempt from tax.

–EXAMPLE–

Lights, bulbs, batteries, timers, tires, tubes, wheels, etc., used to replace similar parts or accessories on an exempt truck are exempt from tax.

(i) Transportation vehicles. In general, all vehicles including transportation vehicles such as airplanes, locomotives, rolling stocks, watercraft, vessels, pipelines, buses, tractors, trailers, trucks, and other vehicular equipment including containers directly used in rendering public transportation are exempt from tax. This exemption does not extend to motor vehicles, including automobiles, used to solicit business or to automobiles supplied to company employees for their personal use.

–EXAMPLES–

(1) A carrier purchases wreckers and service trucks to be used in towing or servicing transportation vehicles which malfunction. The wreckers and service trucks are exempt because they are directly used in rendering public transportation.

(2) Motor vehicles purchased by a carrier, including automobiles, used to solicit business are taxable because they are not directly used in rendering public transportation.

(3) Automobiles supplied to company employees for their personal use are taxable.

(j) Other property. In general, all other tangible personal property is taxable.

–EXAMPLES–

(1) A carrier owns or rents a fork lift to be used for loading and unloading cargo from a railroad car, truck, trailer, or container.

The purchase price or rental charge for use of this equipment is exempt from tax.

(2) A carrier purchases a scale for use in determining freight charges to be billed to customers. The scale is exempt because it is directly used in rendering public transportation.

(3) An airline provides accommodations at a motel for pilots at a "turnaround" point. Such accommodations are taxable.

(k) Real property used for transportation. In general, the purchase, storage, or use of tangible personal property to be incorporated into or used as an improvement to realty used in connection with rendering public transportation is taxable. If, however, such items are directly used in rendering public transportation, this exemption is applicable.

(1) Items of tangible personal property incorporated into railroad beds and tracks, bridges, signal towers, and signaling equipment used for direct control of rolling stock, and materials and property incorporated into watchmen shacks, warehouses, tool sheds, and maintenance shops are taxable exempt from tax.

(2) Material used by a railroad in the construction of a passenger platform for the accommodation of the traveling public is exempt because the material is directly used in rendering public transportation.

(3) Sheet steel pilings for surfacing the watersides of piers used by railroads are not subject to tax. These steel piles are an integral part of the railroad's roadbed and are directly used in rendering public transportation.

(4) Items of tangible personal property purchased by a railroad and used in the construction of pedestrial subways and of trainmen are exempt because they are directly used in the rendition of public transportation.

(l) Purchasing exempt property.

(1) Motor Carrier. Common and/or contract motor carriers of property, and any person, firm, or corporation otherwise specifically exempt by statute from regulation by a federal or state regulatory body (example: I.C.C. or P.S.C.I.) engaged in public transportation of property for hire, when claiming exemption from the Indiana sales or use tax, shall issue to suppliers the Indiana general exemption certificate (form ST-105).

Before being eligible to issue valid general exemption certificates, form ST-105, the purchaser must be properly registered with the Indiana revenue department for sales tax purposes. Motor carriers maintaining facilities or offices in the state of Indiana should hold an Indiana registered retail merchant certificate, while out-of-state firms should have an out-of-state use tax collection and remittance permit. The registration number indicated on either permit must be indicated on the exemption certificate before it becomes valid.

(2) Individuals. Truckers engaged in public transportation but operating under another person's permit are to use exemption certificate form ST-135 when claiming tax exemption for items purchased which will be directly used or consumed for exempt purposes.

Exemption certificate form ST-135 is used in lieu of the general exemption certificate form ST-105 by the above-described individuals and eliminates the necessity for these individuals to register with the Indiana department of revenue.

(m) Promotional, sales, and other non-operational activities. Purchase, storage, or use of tangible personal property not directly used in rendering public transportation is taxable. Tangible personal property used for sales or other non-operational activities is not directly used in rendering public transportation and, therefore, is subject to tax. This category includes, but is not limited to, tangible personal property used in any of the following activities: promotional advertising; sales marketing; projection and costing; heating, air conditioning and ventilation units, and equipment for general temperature control of separate, off-site executive headquarters; research and development; waste disposal.

–EXAMPLES–

(1) A company possesses a contract carrier permit to transport stone for a limestone company. It also purchases stone and sells it to its own customers. During the period it is transporting its own stone, it is not engaged in public transportation and tangible personal property and equipment used and consumed in such activities are subject to tax.

(2) A company possesses a limited common carrier permit to transport oil drilling mud, water, and equipment. The company also uses its equipment and employees at the well-drilling site in setting up and removing equipment as well as utilizing the mud and water in the drilling process. During all operations and activities, except the actual transportation of the mud, water, and equipment, the company is not engaged in public transportation, and the tangible personal property used or consumed in such activities is subject to tax.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-27(010); filed Dec 1, 1982, 10:35 am: 6 IR 55; filed Aug 6, 1987, 4:30 pm: 10 IR 2637)

45 IAC 2.2-5-62 Tangible personal property directly consumed in the rendering of public transportation

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 62. (a) The state gross retail tax shall not apply to the sale, storage, or use of tangible personal property which is directly consumed in the rendering of public transportation of persons or property.

(b) Definition: Consumed. For purposes of this regulation *[45 IAC 2.2]*, "consumed" means the dissipation or expenditure by combustion, use, or application and shall not mean or include the obsolescence, discarding, disuse, depreciation, damage, wear, or breakage of tangible personal property.

(c) The exemption provided by this regulation *[45 IAC 2.2]* is limited to tangible personal property directly consumed in rendering public transportation. For rules governing materials consumed by persons engaged in manufacturing, processing, mining, repairing, and farming and not engaged in rendering public transportation, refer to Regulation 6-2.5-5-5.

(d) In order to qualify for exemption, the consumption of tangible personal property must be reasonably necessary to the rendering of public transportation.

(e) The following is a list of items which the department has determined to be reasonably necessary to the rendering of public transportation:

Roadway machinery and equipment;
Caboose and locomotive supplies such as fuses, lanterns, batteries, and flags;
Equipment and items purchased to meet federal requirements;
Tariff publications;
Vehicle used for public transportation;
Communication equipment;
All replacement parts, repair parts, and materials consumed by exempt equipment;
Tools and equipment used to repair and maintain rolling stock and track;
Vehicles used primarily for transportation of maintenance crews;
Items used for repairs and maintenance of such vehicles;
Items used for production of financial matters, insurance, schedules, routes, and rates;
Items used to provide customer stations, handle baggage, sell tickets;
Items used to keep vehicles clean and safe for the passengers;
Machine shop and truck tools;
Equipment related to the construction and operation of terminals;
Directories;
Gas storage facilities;
Caboose and locomotive compliments such as towels, masking tape, powders, cleaners, ice, water coolers, and bottled water;
Cleaning supplies;
Employee uniforms;
Garage supplies.

(f) The following is a PARTIAL list of items which are not directly used or consumed in the rendering of public transportation and, therefore, are subject to tax:

Promotional expenses, matches, jackets, and promotional items given away to existing or potential customers, advertising to the public, except the printing of schedules and routes;
Sales expenses, sales telephones, and related computer equipment used exclusively for sales activities such as marketing, sales projection, and costing. Such equipment used to handle actual ticket sales (i.e., at the reservation office) or to organize loads and dispatch trucks is exempt;
Office supplies, furniture, equipment, and related items for sales personnel executives, including ground and lawn care, except for grading required for the vehicles directly used in the rendering of public transportation;
Heating and air conditioning for separate, off-site executive headquarters is subject to tax. Heating and air conditioning for reservation area, vehicle maintenance areas, or switching yard control buildings is exempt.

(g) Pre- and post-transportation activity. The purchase, storage, or use of tangible personal property consumed during activities prior to or subsequent to the rendition of public transportation is subject to tax. For purposes of this regulation *[45 IAC 2.2]*, transportation means the movement, transporting, or carrying of persons or property from one place to another and includes loading

and unloading of persons or property into or from transportation vehicles.

(h) Fuel and lubricants. In general, fuel and lubricants are taxable except fuel and lubricants consumed by exempt transportation vehicles or other tangible personal property directly used in rendering public transportation.

–EXAMPLES–

(1) Fuel consumed by an exempt airplane is exempt from tax.

(2) Gasoline consumed by wreckers or repair vehicles is exempt from tax.

(3) Oil used to lubricate a conveyor system used to load cargo into or on an exempt trailer is exempt from tax.

(4) Fuel oil used to heat a carrier's terminals is exempt from tax.

(5) Fuel used to heat off-site, executive headquarters is taxable.

(i) Shipping materials. In general, shipping material or supplies are taxable except such shipping materials or supplies directly consumed during the rendition of public transportation.

–EXAMPLES–

(1) Blocking lumber and steel strap purchased by a carrier and used to hold sewer pipe securely in place on a flat bed trailer are exempt from tax.

(2) Routing cards tacked to the sides of railroad cars to expedite the switching of the cars are exempt.

(3) Disposable cardboard lining installed in boxcars to prevent grain from spilling from such cars is exempt from tax.

(4) Packing cases, pads, ropes, and cushions used by a carrier to prevent damage to goods during shipment are exempt from tax.

(5) Ice, salt, and other refrigerants used to preserve perishables during shipment are exempt from tax.

(j) Other tangible personal property. In general, all other items of tangible personal property are taxable except those items which are directly consumed in rendering public transportation.

–EXAMPLES–

(1) Hydraulic fluids used by dock levelers and fork lift trucks used in loading and unloading exempt vehicles are exempt from tax.

(2) Chemicals used to charge air conditioning units for general temperature control in terminals are exempt from tax.

(3) Materials consumed in printing railroad time tables are exempt under this regulation *[45 IAC 2.2]*.

(k) Promotional, sales, and other nonoperational activities. Purchase, storage, or use of tangible personal property not directly consumed in rendering public transportation is taxable. Tangible personal property consumed during sales or other nonoperational activities is not directly consumed in rendering public transportation and, therefore, is subject to tax. This category includes, but is not limited to, tangible personal property consumed during any of the following activities: promotional advertising; sales marketing, projection, and costing; heating, air conditioning and ventilation units and equipment for general temperature control of separate, off-site executive headquarters; illumination for separate, off-site executive headquarters; research and development; waste disposal. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-27(020); filed Dec 1, 1982, 10:35 am: 6 IR 57; filed Aug 6, 1987, 4:30 pm: 10 IR 2640)*

45 IAC 2.2-5-63 Service directly used or consumed in rendering public transportation

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 63. (a) The state gross retail tax shall not apply to the sale and the use in this state of service which is directly used or directly consumed in the rendering of public transportation of persons or property.

(b) Definition. (1) Service: Service as used in this regulation *[45 IAC 2.2]* means those services which are otherwise taxable under the Gross Retail Tax Act, such as electrical or telephone services.

(2) Public transportation: Refer to Regulation 6-2.5-5-27(010) *[45 IAC 2.2-5-60]* for definition of "public transportation".

(c) General rule. The purchase, sale, storage, use or other consumption in this state of service which is directly used or directly consumed in rendering public transportation of persons or property is exempt from tax. For meaning of "directly used in rendering public transportation" as applied to service and for provisions refer to Regs. 6-2.5-5-27(010) and (020) *[45 IAC 2.2-5-61 and 45 IAC 2.2-5-62]*. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-27(030); filed Dec 1, 1982, 10:35 am: 6 IR 59)*

45 IAC 2.2-5-64 Gasohol exemption

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 64. (a) The Indiana gross retail tax does not apply to the sale of gasohol. For gross retail tax purposes "gasohol" means a fuel containing not more than ninety percent (90%) gasoline and at least ten percent (10%) agriculturally derived ethyl alcohol.

(b) To qualify as an exempt sale the retail merchant must advertise on the pump that the exempt fuel is "gasohol" as defined or that the motor fuel contains at least ten percent (10%) agriculturally derived ethyl alcohol. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-28(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 59)*

45 IAC 2.2-5-65 Mobile homes; industrial residential structures

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 65. (a) For the purpose of this regulation *[45 IAC 2.2]*, "mobile home" means only a structure which:

(1) Is transportable in one or more sections; and
(2) Is eight body feet or more in width; and
(3) Is thirty-two body feet or more in length; and
(4) Is built on a permanent chassis; and
(5) Is designed to be used as a dwelling, with or without a permanent foundation when connected to the required utilities.

(b) If a structure does not meet each of the above conditions it does not qualify as a mobile home, however, it may still qualify for the reduced sales tax rate if all five of the following requirements are fulfilled and the structure constitutes an industrialized building to be used as a one or two family dwelling.

(c) For the purpose of this regulation *[45 IAC 2.2]* an "industrialized building system" means only a structure which:

(1) Must be wholly, or in substantial part, fabricated in an offsite manufacturing facility; and
(2) Must be for use as a one or two family private residence; and
(3) Must be manufactured or assembled for installation or assembly on a permanent foundation at the building site; and
(4) Must be installed on a permanent foundation which transposes the load from the structure to the earth at a depth below the established frost line; and
(5) Does not constitute an "open" system which is capable of inspection at the building site, and does not carry the inspection plate required of a "closed inspection".

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-29(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 59)

45 IAC 2.2-5-66 Sale not attributable to cost of material; exemption

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 66. The gross retail income derived from the sale of a "mobile home" or "industrialized residential structure" which is not attributable to the cost of materials in manufacturing the structure, is exempt from the gross retail tax. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-29(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 59)*

45 IAC 2.2-5-67 Income from sale of mobile home or industrialized residential structure; exemption

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 67. (a) Thirty-five percent (35%) of the gross retail income derived from the sale of a "mobile home" or "industrialized residential structure" is not subject to the gross retail tax.

(b) Thirty-five percent (35%) of the gross retail income derived from the sale of a "mobile home" or "industrialized residential structure" is attributable to costs other than the cost of materials used in manufacturing such structures. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-29(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 59)*

45 IAC 2.2-5-68 Other exemptions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 68. If a dealer who purchases a mobile home or industrialized building system, as described in this regulation *[45 IAC 2.2]*, does not install the structure as an improvement to realty under a lump sum contract, but rather purchases the structure for resale in the regular course of his business, such purchase for resale is exempted. The dealer may provide the seller with an exemption certificate (form ST-105) certifying exempt use in which case the dealer must collect and remit sales tax on the subsequent resale. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-29(c)(020); filed Dec 1, 1982, 10:35 am: 6 IR 60)*

45 IAC 2.2-5-69 Administration; Form ST-108MH

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 69. (a) On or after September 1, 1979, the Bureau of Motor Vehicles will no longer be authorized to collect sales tax on sales by retail merchants of mobile homes and industrialized building systems.

(b) The tax must be collected by the seller and form ST-108MH must be completed in triplicate and signed by both seller and buyer. The original form ST-108MH must be attached by the seller to the certificate of origin or certificate of title used to assign ownership.

(1) If the seller is a registered retail merchant, form ST-108MH, when properly completed will be accepted by the license branch as proof of payment of the sales tax to the registered retail merchant who is the seller of the structure. A copy of the ST-108MH must be retained by the seller in evidence of the fact that the copy was prepared and given to the purchaser, and the seller must furnish the third copy to the Indiana Department of Revenue within 30 days of the sale.

(2) If the seller is not a retail merchant, both buyer and seller must complete form ST-108MH in triplicate. The original copy of the form must be attached to the certificate of title and a copy of the form must be furnished to the Department of Revenue, Room 202, State Office Building, Indianapolis, Indiana 46204, within 30 days following the date of sale.

Any person claiming the 35% reduction on the purchase of a mobile home or industrialized building system must apply for registration of the structure within 30 days of the purchase date as required by the Bureau of Motor Vehicles.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-29(c)(030); filed Dec 1, 1982, 10:35 am: 6 IR 60)

45 IAC 2.2-5-70 Environmental quality control equipment

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 70. (a) The state gross retail tax does not apply to sales of tangible personal property which constitutes, is incorporated into, or is consumed in the operation of, a device, facility, or structure predominately used and acquired for the purpose of complying with any state, local or federal environmental qaulity *[sic.]* statutes, regulations or standards; and the person acquiring the property is engaged in the business of manufacturing, processing, refining, mining, or agriculture.

(b) Definitions. (1) Consumed as used in this regulation *[45 IAC 2.2]* means the dissipation or expenditure by combustion, use or application, and does not mean or include the obsolescence, discarding, disuse, depreciation, damage, wear or breakage of tools, machinery, devices or furnishings.

(2) Incorporated as used in this regulation *[45 IAC 2.2]* means the material must be physically combined into and become a component of the environmental quality device, facility, or structure. The material must constitue a material or integral part of the finished product.

(c) Portion exemption: The total sales price; multiplied by the percentage prescribed in the following table equals the portion of the sales price exempt from the state gross retail tax:

DATE OF SALE	PERCENTAGE
(1) After June 30, 1980 and before July 1, 1981	33⅓%
(2) After June 30, 1981 and before July 1, 1982	66⅔%
(3) After June 30, 1982	100%

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-30(010); filed Dec 1, 1982, 10:35 am: 6 IR 60)

Rule 6. Returns, Remittances and Refunds

45 IAC 2.2-6-1 Time limit on returns and payments

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 1. Every person liable for or required to collect the state gross retail tax or use tax shall file the prescribed returns and made *[sic.]* payments of such taxes for each calendar month within thirty (30) days after the last day of each calendar month unless a longer period is specifically authorized by the Department. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-1(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 60)*

45 IAC 2.2-6-2 Reporting periods

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 2. (a) The Department may permit the taxpayer to divide the year into a different number of reporting periods.

(b) The Department may authorize upon request other fractional periods of the year in lieu of the calendar month including a four (4) week reporting period of a special reporting period resulting from a 52-53 week year for filing the returns and making payments of such taxes. Allowance of a different number of reporting periods is at the Department's discretion.

(c) The returns for reporting periods other than calendar months, specifically authorized by the Department are due thirty days after the last day of the period for which the return is required to be filed. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-1(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 61)*

45 IAC 2.2-6-3 Fiscal taxpayer's reporting period

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 3. (a) A taxpayer may report and pay his state gross retail and use taxes over his fiscal period that corresponds to the calendar period he is permitted to use under Indiana Code 6-2.5-6-1(c) if:

(1) The taxpayer reports his gross income tax or the tax he pays in place of the gross income tax, over a fiscal year or fiscal quarter not corresponding to the calendar year or calendar quarter; and

(2) The Department has not required the taxpayer to stop using the fiscal reporting period.

(b) Definition: Fiscal year. A fiscal year, is a period of twelve months ending on the last day of a month other than December. It is thus distinguished from a calendar year, ending always on December 31. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-1(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 61)*

45 IAC 2.2-6-4 Accrual basis; reporting and payment

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 4. (a) A taxpayer may, without prior Departmental approval report and pay his state gross retail tax on the accrual basis if:

(1) The taxpayer reports his gross income tax or the tax imposed on him in place of the gross income tax, on the accrual basis; and

(2) The Department has not required the taxpayer to stop using the accrual basis of accounting.

(b) Definition: Accrual basis of accounting. On the accrual basis, income is accounted for as and when it is earned, whether or not it has been collected. Expenses are deducted when they are incurred, whether or not paid in the same period. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-2(010); filed Dec 1, 1982, 10:35 am: 6 IR 61)*

45 IAC 2.2-6-5 Consolidated filing

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 5. (a) The Department may permit a retail merchant, wholesaler, or manufacturer holding certificates for more than one store or place of business to file a return consolidating the transactions of all such stores or places of business.

(b) All retail merchants filing consolidated returns for more than one location are assigned an identification number to be used in such filing.

(c) The number is in addition to the Retail Merchant Certificate numbers which are required for each business location. Consolidated identification numbers are not valid for use on exemption certificates or for any purpose other than reporting consolidated sales tax collections.

(d) No charge is made for assigning such number, however, prior to being granted permission to file on a consolidated basis, the taxpayer is required to furnish the Department of Revenue a list of all locations and Retail Merchant Certificate numbers which are to be included in consolidated returns together with such other information as is required in the application.

(e) The sales tax returns of one corporation or company may not be consolidated with the sales tax returns of another corporation or company.

(f) Any future location may be included in the consolidated filing by attaching a request to the original application for registration as a retail merchant. Such request should set out the reporting number under which the returns will be filed. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-3(010); filed Dec 1, 1982, 10:35 am: 6 IR 61)*

45 IAC 2.2-6-6 Sales and use tax collections

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 6. The Department may require a retail merchant to make periodic deposits of his sales and use tax collections during his reporting period and to file an informational return with those deposits; if the Department feels the retail merchant is not properly collecting, reporting or paying the state gross retail tax. *(Department of State Revenue: Ch. 6, Reg. 6-2.5-6-4(010); filed Dec 1, 1982, 10:35 am: 6 IR 62)*

45 IAC 2.2-6-7 Final return and payment

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 7. In this case of any retail merchant who ceases to engage in the kind of business which imposes responsibility for filing returns such retail merchant shall file a final return within one month after discontinuing such business. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-5(010); filed Dec 1, 1982, 10:35 am: 6 IR 62)*

45 IAC 2.2-6-8 Amount of tax liability

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5-5-7

Sec. 8. (a) In determining the retail merchants' tax liability for a particular reporting period, the retail merchant shall multiply the retail merchant's total gross retail income from taxable transactions made during the reporting period except as otherwise provided in IC 6-2.5-5-7 or in this chapter of Regulations *[45 IAC 2.2-6]*, by the sales tax rate.

(b) The amount determined under this Regulation *[45 IAC 2.2]* is the retail merchant's state gross retail and use tax liability regardless of the amount of tax he actually collects. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-7(010); filed Dec 1, 1982, 10:35 am: 6 IR 62)*

45 IAC 2.2-6-9 Income exclusion ratio

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 9. In determining the retail merchants tax liability under Regulation 6-2.5-6-7(010) *[45 IAC 2.2-6-8]* the retail merchant may exclude from his gross retail income from retail transactions made during a particular reporting period, the amount equal to:

(1) The amount of gross retail income for that reporting period, multiplied by;

(2) The retail merchants "income exclusion ratio" for the tax year which contains the reporting period.

(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-8(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 62)

45 IAC 2.2-6-10 Income exclusion ratio defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 10. The retail merchants' "income exclusion ratio" for a particular tax year equals a fraction as set forth:

$$\frac{\text{numerator = gross income from transactions under 10¢}}{\text{denominator = estimated total gross income for tax year from all retail transaction}}$$

(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-8(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 62; filed Aug 6, 1987, 4:30 pm: 10 IR 2642)

45 IAC 2.2-6-11 Recordkeeping requirements on exempt sales less than ten cents

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 11. (a) In order to minimize the taxpayer's recordkeeping requirements, the department has prescribed a formula for determining the retail merchant's "income exclusion ration" for a tax year.

(1) The retail merchant may determine the ration of 1¢ to 9¢ sales to total sales from actual records of sales during a period of fifteen consecutive days during the first quarter of the calendar year. However, the period of time may be changed if the change is requested by the retail merchant because of his peculiar accounting procedures or marketing factors.

(2) If a merchant has multiple selling locations or different kinds of selling transactions, the merchant may apply in advance to the Indiana department of revenue for permission to use a "representative sampling of locations" at which such checks are to be made. Sufficient information to establish the fact that such locations will be "representative" of all locations will be required.

(3) The merchant using the sampling method must keep an accurate record of the dollar amount of unitary transactions under ten cents (10¢) during this fifteen day period. By dividing this total amount of gross sales at the locations used for the fifteen day period, a percentage can be determined which the merchant may apply against gross sales to establish "sales not subject to the tax". This percentage factor is used throughout the balance of the calendar year in which the sampling is made.

–EXAMPLE–

(A) Gross sales for 15 consecutive days during first quarter $2500.00
(B) Sales of 1¢ to 9¢ during same period 150.00
(C) $150.00 divided by $2500.00 . . . . . 6%

Accordingly, the merchant would deduct 6% of gross receipts as nontaxable 1¢ to 9¢ sales on line "D" of his sales and use tax reporting form ST-103.

(b) It is important that the percentage factor be arrived at from the merchant's actual records. These records must be maintained for four (4) years because the merchant will be required to substantiate the percentage factor used upon the request of the department. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-8(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 62; filed Aug 6, 1987, 4:30 pm: 10 IR 2642)*

45 IAC 2.2-6-12 Bad debts deduction

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 12. (a) In determining the taxpayer's sales and use tax liability under Regulation 6-2.5-6-7 *[45 IAC 2.2-6-8]*, a retail

merchant shall deduct from his gross retail income from retail transactions made during a particular reporting period, the retail merchant's bad debts or uncollectible receivables.

(b) In order to qualify for this exemption the retail merchant must have:

(1) Previously reported the transaction and remitted the sales or use tax to the Department;

(2) Not collected the tax from the customer; and

(3) Written the receivable off for federal income tax purposes.

(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-9(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 63)

45 IAC 2.2-6-13 Collection from bad debts

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 13. If a retail merchant deducts a receivable under Regulation 6-2.5-6-9(a)(010) *[45 IAC 2.2-6-12]* and subsequently collects that receivable, the amount collected shall be included in the gross retail income, from retail transactions, for the particular reporting period in which he makes the collection. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-9(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 63)*

45 IAC 2.2-6-14 Collection allowance

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5-7-5

Sec. 14. In order to compensate retail merchants for collecting and timely remitting the state gross retail and use tax, the retail merchant, except the retail merchant referred to in Regulation 6-2.5-6-10(c)(010) *[45 IAC 2.2-6-16]*, is entitled to deduct and retain from the tax liability determined in IC 6-2.5-7-5 or under this chapter of the Regulation *[45 IAC 2.2-6]*, if timely remitted, a retail merchant's collection allowance. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-10(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 63)*

45 IAC 2.2-6-15 Collection allowance rates

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 15. The collection allowance equals one percent (1%) of the retail merchant's state gross retail and use tax liability accrued during reporting periods which begin after December 31, 1979. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-10(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 63)*

45 IAC 2.2-6-16 Collection allowance; those not entitled

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 16. A retail merchant described in IC 6-2.5-4-5, IC 6-2.5-4-6, or IC 6-2.5-4-7 is not entitled to the allowance provided by this regulation *[45 IAC 2.2]*. The aforementioned statutes described power susidiaries *[sic.]* or public utilities, telephone utilities, and telegraph utilities as not entitled to the collection allowance. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-10(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 63)*

45 IAC 2.2-6-17 Energy assistance deductions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 17. (a) A retail merchant who extends energy assistance under IC 4-3-10 *[Repealed by P.L.11-1980, SECTION 8.]*, may deduct from his sales and use tax liability cost of the energy assistance extended under IC 4-3-10 *[Repealed by P.L.11-1980, SECTION 8.]* during the reporting period for which the state gross retail and use tax payment is made.

(b) If the cost of the energy assistance is greater than the retail merchant's sales and use tax liability for that reporting period, the retail merchant will be entitled to claim a refund from the Department for the additional funds.

(c) Alternatively, the excess credits may be applied to subsequent months tax liability in lieu of a refund application. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-11(010); filed Dec 1, 1982, 10:35 am: 6 IR 63)*

Rule 7. Collection and Remittance of State Gross Retail Tax on Motor Fuel

45 IAC 2.2-7-1 Display of price on pump

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 1. (a) A retail merchant who uses a metered pump to dispense gasoline shall display on the pump the total price per unit of gasoline.

(b) The retail merchant may not advertise the motor fuel at a price which is different than the pump price he is required to dispaly *[sic.]* on the metered pump.

(c) This regulation *[45 IAC 2.2]* does not apply to the sale of motor fuel which is not dispensed through a metered pump.

(d) "Metered pump" means a stationary pump which is capable of metering the amount of motor fuel dispensed from it and which is capable of simultaneously calculating and displaying the price of the motor fuel so dispensed.

(e) The regulation also does not apply to the sale of diesel fuels. *(Department of State Revenue; Ch. 7, Reg. 6-2.5-7-2(010); filed Dec 1, 1982, 10:35 am: 6 IR 63)*

45 IAC 2.2-7-2 Rate of tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 2. With respect to the sale of gasoline which is dispensed from a metered pump, the retail merchant shall collect for each unit sold an amount equal to:

(1) The price per unit before the addition of state and federal taxes;

(2) Multiplied by the sales tax rate.

(Department of State Revenue; Ch. 7, Reg. 6-2.5-7-3(010); filed Dec 1, 1982, 10:35 am: 6 IR 64)

45 IAC 2.2-7-3 Collection by retail merchant

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 3. The retail merchant selling gasoline which is dispensed from a metered pump must collect the state gross retail tax prescribed in Regulation 6-2.5-7-3(010) *[45 IAC 2.2-7-2]* even if the transaction is exempt from taxation under IC 6-2.5-5-5 *[Repealed by P.L.61-1980, SECTION 15.]*. *(Department of State Revenue; Ch. 7, Reg. 6-2.5-7-3(020); filed Dec 1, 1982, 10:35 am: 6 IR 64)*

45 IAC 2.2-7-4 Exempt transactions; refund procedures for cash transactions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 4. (a) All persons purchasing gasoline through a metered pump to be used for an exempt purchase may receive a refund of the sales tax paid at the time of the purchase.

(b) Each claim must be filed on a Claim for Refund form (GA110L-MP). The white and pink copies of your receipts must accompany the white and pink copies of your refund claim. Claims may be filed on a monthly, quarterly, semi-annual or annual status.

(c) To obtain additional receipt books, a written request along with the proper payment should be addressed to the Sales Tax Division, Room 208, State Office Building, Indianapolis, Indiana 46204. *(Department of State Revenue; Ch. 7, Reg. 6-2.5-7-4(010);*

filed Dec 1, 1982, 10:35 am: 6 IR 64)

45 IAC 2.2-7-5 Exempt transactions; refunds, procedures for credit transactions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 5. (a) If the credit card of a participating credit card company is used for the purchase of gasoline through a metered pump and the gasoline is for an exempted purpose the full pump price must be charged, however, the participating credit card company will credit the card holders account with the amount of sales tax included, provided the card holder has furnished to the card company a properly completed exemption certificate certifying exempt use.

(b) The credit card company would then either use the total amount of sales tax credited to credit card holders as an offset to sales tax due to the state from the oil company which operates the credit card company; or would apply to the Indiana Department of Revenue for a refund if no sales tax is due from the credit card company or its owner. *(Department of State Revenue; Ch. 7, Reg. 6-2.5-7-4(020); filed Dec 1, 1982, 10:35 am: 6 IR 64)*

45 IAC 2.2-7-6 Reports; payments, deductions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5; IC 6-6-1.1

Sec. 6. Each retail merchant selling gasoline from a metered pump is required to provide the Department with the following information:

(1) Total number of units sold from a metered pump during the period covered by the report;

(2) The total amount of money received from the sale of the gasoline described in clause (1) during the period covered by the report; and

(3) That portion of the amount described in clause (2) which represents state and federal taxes imposed under IC 6-2.5, IC 6-6-1.1 or Section 4081 of the Internal Revenue Code.

(Department of State Revenue; Ch. 7, Reg. 6-2.5-7-5(010); filed Dec 1, 1982, 10:35 am: 6 IR 64)

45 IAC 2.2-7-7 Payments and deductions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5-6-11

Sec. 7. (a) The retail merchant's tax liability for the sale of gasoline from a metered pump shall be computed by taking one twenty-sixth (1/26) of the gross receipts:

(1) Including state gross retail tax, but;

(2) Excluding Indiana and federal gasoline taxes.

(b) The retail merchant is required to remit the amount arrived at by using the formula in clause (1) *[subsection (a) of this section]* regardless of the amount of state gross retail tax which was actually collected.

(c) The retail merchant is entitled to deduct the amounts prescribed in IC 6-2.5-6-11 as the collection allowance and IC 6-2.5-6-11 the energy assistance credit. *(Department of State Revenue; Ch. 7, Reg. 6-2.5-7-5(020); filed Dec 1, 1982, 10:35 am: 6 IR 64)*

Rule 8. Registration

45 IAC 2.2-8-1 Registered retail merchants' certificate

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 1. Without a retail merchants' certificate, a retail merchant may not make a retail transaction in Indiana.

A "retail merchant" is defined in Regulation 6-2.5-1-8(010) *[45 IAC 2.2-1-1(n)]*.

A "retail transaction" is defined in Regulation 6-2.5-1-2(a)(010) *[45 IAC 2.2-1-1(c)]*. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-1(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 65)*

45 IAC 2.2-8-2 Registered retail merchants' certificate; requirements

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 2. To obtain a registered retail merchants' certificate the merchant is required to fill out an application provided by the Indiana Department of Revenue, Central Registration Section;

(1) Pay a registration fee;

(2) Obtain a certificate for each place of business; and

(3) Provide security, if required by the Department, pursuant to Regulation 6-2.5-6-12.

(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-1(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 65)

45 IAC 2.2-8-3 Supplemental application

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 3. If a retail merchant intends to open additional business sites during a calendar year, the merchant must file a supplemental application and pay the registration fee for that place of business. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-1(e)(010); filed Dec 1, 1982, 10:35 am: 6 IR 65)*

45 IAC 2.2-8-4 Registered retail merchants' certificate; use tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5-3-1; IC 6-2.5-8-1

Sec. 4. If a retail merchant engaged in business in Indiana as defined ic *[sic.]* IC 6-2.5-3-1(c) makes retail transactions that are only subject to the use tax, the retail merchant is required to obtain a registered retail merchants' certificate before making those transactions. In order to obtain the certificate the retail merchant is required to:

(1) Follow same procedure as stated in IC 6-2.5-8-1(b) and (c), and

(2) Also include on the application:

(A) The names and addresses of the retail merchants' principal employees, agents, or representatives who are engaged in Indiana in the solicitation or negotiation of the retail transactions;

(B) The location of all of the retail merchants' places of business in Indiana, including offices and distribution houses; and

(C) Any other information that the Department requests.

(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-1(f)(010); filed Dec 1, 1982, 10:35 am: 6 IR 65)

45 IAC 2.2-8-5 Out-of-state registration

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 5. (a) An out-of-state merchant may register with the Indiana Department of Revenue to collect and remit the Indiana use tax on sales to Indiana purchasers. The Indiana purchaser then pays the Indiana use tax on the sale to those merchants who are properly registered.

(b) The proper application for obtaining the out-of-state registration form is form DB-001. When the application is completed and returned to the Department, a registration number will be issued and the sales and use tax reporting form (ST-103) will be mailed regularly. No charge is made for the out-of-state use tax permit, however, only those businesses located outside Indiana may qualify for such registration.

(c) Upon receiving the certificate, the out-of-state retail merchant becomes subject to the same conditions and duties as an Indiana retail merchant and must then collect the use tax due on all sales of tangible personal property that he knows is intended for use in Indiana. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-1(g)(010); filed Dec 1, 1982, 10:35 am: 6 IR 65)*

45 IAC 2.2-8-6 Valid exemption certificate

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 6. (a) A manufacturer or wholesaler may register with the Department so that he may issue valid exemption certificates when making an exempt purchase. The registered retail merchants' certificate number is necessary to complete a valid exemption certificate.

(b) A manufacturer or wholesaler, wishing to register, must apply in the same manner and pay the same fee as a retail merchant under Regulation 6-2.5-8-1 *[45 IAC 2.2-8-1 through 45 IAC 2.2-8-5]. (Department of State Revenue; Ch. 8, Reg. 6-2.5-8-3(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 66)*

45 IAC 2.2-8-7 Retail merchants' certificate; each place of business

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 7. The wholesaler or manufacturer is required to obtain a retail merchants' certificate for each place of business making exempt purchases, and which are listed on the application. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-3(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 66)*

45 IAC 2.2-8-8 Exempt organizations; certificate

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 8. (a) Organizations exempt from gross retail tax under IC 6-2.5-5-21, IC 6-2.5-5-25, or IC 6-2.5-5-26 may register with the Not-For-Profit Section, Income Tax Division, in order to issue proper exemption certificates for exempt transactions.

(b) An exempt organization making taxable sales must register with the Central Registration Section and obtain a registered retail merchants' certificate. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-4(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 66)*

45 IAC 2.2-8-9 Outstanding tax warrants

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 9. The Department may not issue or renew a certificate for a retail merchant whose name appears on the most recent monthly warrant list, unless that taxpayer pays the tax or makes arrangements satisfactory to the Department for the payment of the tax. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-6(010); filed Dec 1, 1982, 10:35 am: 6 IR 66)*

45 IAC 2.2-8-10 Revocation of certificate; notice

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 10. The Department may revoke any certificate issued, after giving the holder of the certificate at least five (5) days notice, before it revokes the certificate. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-7(010); filed Dec 1, 1982, 10:35 am: 6 IR 66)*

45 IAC 2.2-8-11 Revocation of certificate required

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 11. (a) The Department must revoke a lifetime retail merchants' certificate, wholesaler's certificate or exempt organization certificate, if for a period of three (3) years the certificate holder:

(1) Failed to file the required sales and use tax returns; or

(2) Failed to report any sales and use tax on the required returns.

(b) The Department must give the taxpayer at least five (5) days notice, prior to revoking a certificate. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-7(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 66)*

45 IAC 2.2-8-12 Exemption certificates

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 12. (a) Exemption certificates may be issed *[sic.]* only by purchasers authorized to issue such certificates by the Department of Revenue. Retail merchants, manufacturers, wholesalers and others who must register with the Department of Revenue and who qualify to purchase exempt from tax under this Act *[IC 6-2.5]* may issue exemption certificates with respect to exempt transactions. All persons or entities not required to register with the Department as retail merchants, manufacturers, or wholesalers, and who are exempt under this Act *[IC 6-2.5]* with respect to all or a portion of their purchases are authorized to issue exemption certificates with respect to exempt transaction provided an exemption number has been assigned by the Department of Revenue, or provided that the Department of Revenue has specifically provided a form and manner for issuing exemption certificates without the need for assigning an exemption number.

(b) Retail merchants are required to collect the sales and use tax on each sale which constitutes a retail transaction unless the merchant can establish that the item purchased will be used by the purchaser for an exempt purpose.

(c) All retail sales of tangible personal property for delivery in the state of Indiana shall be presumed to be subject to sales or use tax until the contrary is established. The burden of proof is on the buyer and also on the seller unless the seller receives an exemption certificate.

(d) Unless the seller receives a properly completed exemption certificate the merchant must prove that sales tax was collected and remitted to the state or that the purchaser actually used the item for an exempt purpose. It is, therefore, very important to the seller to obtain an exemption certificate in order to avoid the necessity for such proof. The mere filing of a Registered Retail Merchant Certificate number is not sufficient to relieve the seller of the responsibility to collect the sales tax or prove exempt use by the buyer.

(e) No exemption certificates are required for sales in interstate commerce, however, proper records must be maintained to substantiate such sales.

(f) An exemption certificate issued by a purchaser shall not be valid unless it is executed in the prescribed and approved form and unless all information requested on such form is completed.

(g) An exemption certificate or other evidence supporting an exempt sale must be maintained by the seller for at least three (3) years after the due date of the tax return upon which such exempt transaction is reported.

(h) Exemption certificates may be reproduced provided no change is made in the wording or content. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-8(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 66)*

45 IAC 2.2-8-13 Exemption certificates; authorization

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 13. The following are the only persons authorized to issue exemption certificates:

(1) Retail merchants, wholesalers, and manufacturers, who are registered with the Department under this chapter *[45 IAC 2.2-8]*;

(2) Organizations which are exempt from the state gross retail tax under IC 6-2.5-5-21, IC 6-2.5-5-25, or IC 6-2.5-5-26 and which are registered with the Department under this chapter *[45 IAC 2.2-8]*; and

(3) Other persons who are exempt from the state gross retail tax with respect to any part of their purchases.

(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-8(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 67)

45 IAC 2.2-8-14 Blanket exemption certificates

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 14. (a) The Department may allow taxpayers to issue blanket exemption certificates to cover exempt purchases.

(b) The Department may impose conditions or set forth restrictions on the use of the blanket exemption certificates. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-8(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 67)*

45 IAC 2.2-8-15 Direct payment permits

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 15. The Department may issued *[sic.]* a "direct payment permit" to retail merchants, manufacturers, or wholesalers, upon request. The Department may issue the permit subject to such conditions as it deems reasonable. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-9(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 67)*

45 IAC 2.2-8-16 Direct payment permits; application

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 16. (a) The direct payment permit must be applied for, and is normally issued only in those instances where it is shown that it is impossible at the time of purchase to determine whether or not the materials will be used for an exempt purpose. The holder of such a permit is required to furnish his suppliers with a copy of the permit, and the permit must be renewed annually.

(b) The retail merchant who sells to a customer who furnishes a copy of a direct payment permit is not required to collect sales tax; but must retain a copy of the permit in his file.

(c) A direct payment permit is not a declaration that the issuer is entitled to exemption, but is rather a declaration that the issuer will remit use tax on any purchase on which sales tax was due. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-9(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 67)*

45 IAC 2.2-8-17 Direct payment permits; contractors

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 17. (a) The contractor who has applied for and received permission to pay on a direct payment permit basis may issue direct payment permits to his suppliers, but when acting as a contractor should remember that he must obtain an exemption certificate–not a direct payment permit–from any exempt customer for whom he is making an improvement to real estate as a result of a flat bid or lump sum contract.

(b) A builder under a time and material agreement is selling the material to his customer and should normally collect sales tax. The builder may accept a direct payment permit from his customer and is then relieved from the liability to collect sales tax.

(c) A flat bid contractor, on the other hand, does not sell tangible personal property or collect sales tax as a result of his contract, and the receipt of a direct payment permit is of no value to him. If the organization, for which the contractor is constructing the improvement, is entitled to exemption, they must give the contractor an exemption certificate (ST-105) certifying that fact. A direct payment permit from the organization would not certify that the organization was entitled to exemption–only that they would pay tax for which they were liable. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-9(b)(020); filed Dec 1, 1982, 10:35 am: 6 IR 67)*

45 IAC 2.2-8-18 Revocation of direct payment permit

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 18. The Department may revoke a direct payment certificate, without cause, at any time. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-9(c)(020); filed Dec 1, 1982, 10:35 am: 6 IR 68)*

Rule 9. Enforcement and Penalties

45 IAC 2.2-9-1 Exemption certificate; unlawful issuance or acceptance

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5; IC 35-50-3-3

Sec. 1. (a) A person who issues an exemption certificate, with the intention of unlawfully avoiding the payment of the state gross retail or use tax, commits a Class B misdemeanor.

(b) As provided in IC 35-50-3-3: A person who commits a Class B misdemeanor shall be imprisoned for a fixed term of not more than one hundred eighty (180) days; in addition, he may be fined not more than one thousand dollars ($1,000). *(Department of State Revenue; Ch. 9, Reg. 6-2.5-9-1(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 68)*

45 IAC 2.2-9-2 Penalties; individuals

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 2. (a) A person who accepts an exemption certificate with the intention of helping the issuer unlawfully avoid paying the state gross retail and use tax, commits *[sic.]* Class B misdemeanor.

(b) A Class B misdemeanor is defined in Regulation 6-2.5-9-1(a)(010)(2) *[45 IAC 2.2-9-1(b)]*. *(Department of State Revenue; Ch. 9, Reg. 6-2.5-9-1(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 68)*

45 IAC 2.2-9-3 Penalties; retail merchants

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 3. (a) A retail merchant who makes a retail transaction without having applied for or obtained a registered retail merchants' certificate or a renewal of a registered retail merchants' certificate commits a Class B infraction.

(b) As provided in IC 35-50-4-3 *[Repealed by P.L.108-1981, SECTION 40.]*: A person who commits a Class B infraction shall be fined not more than one thousand dollars ($1,000). *(Department of State Revenue; Ch. 9, Reg. 6-2.5-9-2(010); filed Dec 1, 1982, 10:35 am: 6 IR 68)*

45 IAC 2.2-9-4 Responsible officer liability

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5; IC 35-50-2-7

Sec. 4. (a) Businesses hold sales and use taxes in trust accounts for the state of Indiana. If businesses do not properly remit these taxes, responsible officers can be held personally liable for those trust fund taxes.

(b) Responsible officer is defined as an individual who:

(1) Is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) Has a duty to remit state gross retail or use taxes to the Department of Revenue.

(c) If a responsible officer knowingly fails to remit those taxes to the state, he commits a Class D felony.

(d) As provided in IC 35-50-2-7:

(1) A person who commits a Class D felony shall be imprisoned for a fixed term of two (2) years, with not more than two (2) years added for aggravating circumstances; in addition, he may be fined not more than ten thousand dollars ($10,000).

(2) Notwithstanding subsection (1) of this section *[subsection (a) of this section]*, if a person has committed a Class D felony, the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly. The court shall enter in the record, in detail, the reasons for its action whenever it exercizes *[sic.]* the power granted in this subsection.

(Department of State Revenue; Ch. 9, Reg. 6-2.5-9-3(010); filed Dec 1, 1982, 10:35 am: 6 IR 68)

45 IAC 2.2-9-5 Inclusion in the price or absorption of the tax; offense

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5-7

Sec. 5. (a) Except as provided in IC 6-2.5-7, it is unlawful to:

(1) Display an advertised price, marked price, or publicly stated price that includes the state gross retail or use taxes;

(2) Offer to assume or absorb part of a customer's state gross retail or use tax on a sale; or

(3) Offer to refund part of a customer's state gross retail or use tax as a part of a sale.

(b) An individual who commits any of the unlawful acts described in section one (1) of this regulation *[subsection (a) of this section]* commits a Class B infraction.

(c) A Class B infraction is defined in Regulation 6-2.5-9-2(010)(2) *[45 IAC 2.2-9-3(b)]*. *(Department of State Revenue; Ch. 9, Reg. 6-2.5-9-4(010); filed Dec 1, 1982, 10:35 am: 6 IR 69)*

45 IAC 2.2-9-6 Penalties; retail merchants; false advertisement

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5-7-2

Sec. 6. (a) A retail merchant who uses a metered pump to dispense gasoline and who advertises the gasoline at a price other than that provided in IC 6-2.5-7-2, commits a Class B infraction.

(b) A Class B infraction is defined in Regulation 6-2.5-9-2(010)(2) *[45 IAC 2.2-9-3(b)]*. *(Department of State Revenue; Ch. 9, Reg. 6-2.5-9-4(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 69)*

45 IAC 2.2-9-7 Vehicle license, aircraft or watercraft registration; payment of taxes

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 7. (a) The state may not license a vehicle for use on the highways or register an aircraft or watercraft unless the person obtaining the license or registration:

(1) presents proper evidence, prescribed by the department, showing that the state gross retail and use taxes imposed in respect to the vehicles, aircraft, or watercraft have been paid or that the state gross retail and use taxes are inapplicable because of an exemption; or

(2) files the proper form and pays the state gross retail and use taxes imposed in respect to the vehicle, aircraft, or watercraft.

(b) For further information in regards to motor vehicles, see Regulation 6-2.5-5-15(020) *[45 IAC 2.2-5-22]* and Regulation 6-2.5-3-6(c)(010) *[45 IAC 2.2-3-22]*.

(c) For further information in regards to aircraft or watercraft, see Regulation 6-2.5-5-15(030) *[45 IAC 2.2-5-23]* and Regulation 6-2.5-3-6(c)(020) *[45 IAC 2.2-3-23]*. *(Department of State Revenue; Ch. 9, Reg. 6-2.5-9-6(010); filed Dec 1, 1982, 10:35 am: 6 IR 69; filed Aug 6, 1987, 4:30 pm: 10 IR 2643)*

Rule 10. Miscellaneous

45 IAC 2.2-10-1 Miscellaneous (Repealed)

Sec. 1. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 2.2-10-2 Gross income tax law; application (Repealed)

Sec. 2. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 2.2-10-3 Citations to prior law (Repealed)

Sec. 3. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

ARTICLE 3. ADJUSTED GROSS INCOME (REPEALED)

(Repealed by Department of State Revenue; filed Oct 15, 1979, 11:15 am: 2 IR 1564; errata, 2 IR 1743)

ARTICLE 3.1. ADJUSTED GROSS INCOME TAX

Rule 1. State Adjusted Gross Income Tax

45 IAC 3.1-1-1 Definition of adjusted gross income for individuals

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5

Sec. 1. Adjusted Gross Income for Individuals Defined. For individuals, "Adjusted Gross Income" is "Adjusted Gross Income" as defined in Internal Revenue Code § 62 modified as follows:

(1) Begin with gross income as defined in section 61 of the Internal Revenue Code.

(2) Subtract any deductions allowed by section 62 of the Internal Revenue Code.

(3) Make all modifications required by IC 6-3-1-3.5(a). *(Department of State Revenue; Reg 6-3-1-3.5(a)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1511; errata, 2 IR 1743)*

45 IAC 3.1-1-2 Definition of gross income for individuals

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3-1-8

Sec. 2. "Gross Income" Defined for Individuals. Indiana residents must report all income as defined by § 61 of the Internal Revenue Code. Sources of income include, but are not limited to:

(1) Compensation for services, including fees, commissions and similar items
(2) Gross income derived from business
(3) Gains derived from dealings in property
(4) Interest
(5) Rents
(6) Royalties
(7) Dividends
(8) Alimony and separate maintenance payments
(9) Annuities
(10) Income from life insurance and endowment contracts
(11) Pensions
(12) Income from discharge of indebtedness
(13) Distributive share of partnership gross income
(14) Distributive share of taxable income from an electing small business corporation
(15) Income in respect of a decedent
(16) Income from an interest in an estate or trust

Nonresidents and part-year residents are also required to report gross income, as defined above, from all sources. These taypayers *[sic.]* are afforded a deduction for non-Indiana income as explained in Regulation 6-3-1-3.5(a)(050) *[45 IAC 3.1-1-5]*. *(Department of State Revenue; Reg 6-3-1-3.5(a)(020); filed Oct 15, 1979, 11:15 am: 2 IR 1511; errata, 2 IR 1743)*

45 IAC 3.1-1-3 Allowed Internal Revenue Code deductions

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5

Sec. 3. Internal Revenue Code Section 62 Deductions in Arriving at Indiana Adjusted Gross Income for Individuals. The following deductions contained in Internal Revenue Code Section 62 are allowed in determining Indiana Adjusted Gross Income:

(1) Trade and business deductions
(2) Certain trade or business deductions of employees
(3) Long-term capital gains deduction (Internal Revenue Code § 1202)
(4) Losses from the sale or exchange of property (Internal Revenue Code § 161 and following)

(5) Deductions attributable to rents and royalties (Internal Revenue Code § 161 and following, § 212, and § 611)

(6) Certain deductions of life tenants and income beneficiaries of property (Internal Revenue Code § 167 and § 611)

(7) Pension, profit-sharing, annuity, and bond purchase plans of self-employed individuals [Internal Revenue Code § 401 (c)(1), § 404, and § 405 (c)]

(8) Moving expense deduction–Indiana residents may take a deduction against gross income for moving expenses incurred in a move into or within Indiana, provided that the requirements outlined in Section 217 of the Internal Revenue Code are met. If a taxpayer moves out of Indiana he is not allowed to take this deduction. An exception to this rule occurs when the taxpayer remains a resident of Indiana after he changes locations. For example, an Indiana resident who is in the military remains an Indiana resident regardless of where he is stationed. If such person's duty station is changed he may take this deduction for expenses incurred in the move.

(9) Pension, profit-sharing, annuity, and bond purchase plans of electing small business corporations [Internal Revenue Code § 1379 (b) (3)]

(10) Retirement savings [Internal Revenue Code § 219 and § 220]

(11) Certain portions of lump-sum distributions from pension plans taxed under Internal Revenue Code § 402 (e) [IRC § 402 (e) (3)]

(12) Penalties for premature withdrawal of funds from time savings accounts or deposits (IRC § 165)

(13) Alimony (Internal Revenue Code § 215) *(Department of State Revenue; Reg 6-3-1-3.5(a)(030); filed Oct 15, 1979, 11:15 am: 2 IR 1511; errata, 2 IR 1743)*

45 IAC 3.1-1-4 Disallowed Internal Revenue Code deductions

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5

Sec. 4. Deductions from Federal Adjusted Gross Income Taken in Determining Federal Taxable Income Which Are Not Allowed in Determining Indiana Adjusted Gross Income for Individuals. Deductions under Internal Revenue Code Subchapter B, Parts VI and VII which are allowable in determining Federal taxable income (itemized deductions) are not allowable deductions in determining Indiana Adjusted Gross Income. *(Department of State Revenue; Reg 6-3-1-3.5(a)(040); filed Oct 15, 1979, 11:15 am: 2 IR 1512; errata, 2 IR 1743)*

45 IAC 3.1-1-5 Modifications to federal adjusted gross income to determine Indiana adjusted gross income

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3-1-17; IC 6-3-2-3.5; IC 6-3-2-4; IC 6-3-7-1

Sec. 5. Modifications to Adjusted Gross Income as Defined in Internal Revenue Code § 62 Which Are Required in Determining Indiana Adjusted Gross Income for Individuals. The following modifications to Federal Adjusted Gross Income as defined in Internal Revenue Code § 62 must be made in determining Indiana Adjusted Gross Income:

(1) Subtract income exempt from state taxation by the Constitution and/or statutes of the United States.

(a) Exempt interest:

All interest reported for federal tax purposes must be reported for Indiana Adjusted Gross Income Tax purposes. However, in determining taxable interest income for Indiana Adjusted Gross Income Tax purposes, a deduction may be taken for interest received on direct obligations of the federal government or its agencies, as required under 31 USC 742. Such deduction is not allowed for interest attributable to loans or other financial obligations on which the federal government is merely a guarantor or insurer.

Interest from the following United States Government obligations is deductible for Indiana Adjusted Gross Income Tax purposes. The list is not all inclusive:

Banks for Cooperatives
Central Banks for Cooperatives
Commodity Credit Corp.
District of Columbia
Export-Import Banks of the United States
Farm Credit Banks

Farmers Home Corp.
Federal Deposit Insurance Corp.
Federal Farm Loan Corp.
Federal Financing Banks
Federal Home Loan Banks
Federal Housing Administration
Federal Intermediate Credit Banks
Federal Intermediate Credit Corp.
Federal Land Banks Association
Federal Land Banks
Federal Savings and Loan Insurance Corp.
Home Owner's Loan Corp.
Joint Stock Land Banks
Maritime Administration
Production Credit Associations
Series E, F, G and H Bonds
Small Business Administration
U.S. Government Bonds
U.S. Government Certificates
U.S. Government Notes
U.S. Housing Authority
U.S. Treasury Bills
U.S. Maritime Commission
U.S. Possessions–obligations of Puerto Rico, Virgin Islands, etc.
U.S. Postal Service (Bonds)
Tennessee Valley Authority (Bonds only)
Interest and other earnings on these securities are taxable:
Building and Loan Associations
Credit Union Share Accounts
District of Columbia Armory Board
Federal National Mortgage Association*
Federal or State Savings and Loan Associations
Government National Mortgage Associations
Panama Canal Bonds
Phillipine Bonds
Also, interest received in the following instance is taxable:

(a) On refunds of federal income tax
(b) On interest-bearing certificates issued in lieu of tax exempt securities, such income losing its identity when merged with other funds
(c) On debentures issued to mortgages or mortgages foreclosed under the provisions of the National Housing Act
(d) On Promissory notes of a federal instrumentality
(e) On Federal Home Loan Time deposits
(f) On FSLIC secondary reserve prepayments
(g) On Government National Mortgage Association participation certificates and on Federal Home Loan Mortgage Corporation participation certificates in mortgage pools
(h) On U.S. Postal Service certificates and savings deposits
(i) On participating loans in the Federal Reserve System for member banks (Federal Funds)
(j) Farmer's Home Administration

*[NOTE: The Department has determined that interest paid by the Federal National Mortgage Association (FNMA) is subject to Indiana income taxation because FNMA has been a government sponsored private corporation since 1968. Thus, its obligations are not obligations of the federal government, and interest paid by FNMA will be considered taxable as of January 1, 1974. Further,

where FNMA stock is traded on national stock exchanges, dividends from such stock are taxable.]

[NOTE: Although municipal bond interest (including interest on public housing authority bonds) and bond interest from United States Government obligations are excludable, the gain derived from the sale of tax-exempt municipal bonds and United States Government obligations held as investments is included in Gross Income. The gain to be reported for Indiana tax purposes is the gain reported for federal income tax purposes. Losses sustained are deductible, subject to capital loss limitations.]

(b) Income of nonresidents and part-year residents:

Income earned by a nonresident or part-year resident which is from an out-of-state source, which is earned while not a resident of Indiana, and which is received while not a resident of Indiana is exempt from Adjusted Gross Income Tax under the Constitution of the United States. Such income should be deducted from Federal Adjusted Gross Income in determining Indiana Adjusted Gross Income. Nonresidents and part-year residents excluding income under this subsection may take deductions pursuant to Regulation 6-3-1-3.5(a)(010) *[45 IAC 3.1-1-1]* only to the extent that the deductions were derived from income taxable to Indiana.

(2) Add back an amount equal to any deduction or deductions taken pursuant to Internal Revenue Code §62 for income taxes levied by any state of the United States, and for real estate and personal property taxes levied by any subdivision of any state of the United States. The add back does not include income taxes paid to cities and foreign countries. The add back is not required by individuals deducting these taxes as itemized deductions, since such deductions are not allowed in determining Federal Adjusted Gross Income.

Individuals with business-related automobile expenses must add back annual motor vehicle taxes taken as a deduction under Internal Revenue Code §63. However, such add-back does not include the minimum motor vehicle excise tax and registration fee.

(3) Subtract the $1000 personal exemption. In the case of a joint return, the exemption is limited to the lesser of $1000 or the Adjusted Gross Income of each spouse computed without regard to the modification for additional exemptions allowed under IC 6-3-1-3.5(a)(4). However, in no event will the exemption for each spouse be less than $500.

(4) Subtract $1000 for each exemption taken on the Federal return for taxpayer or spouse aged 65 or over, [Internal Revenue Code §151(c)]. Subtract $500 for each exemption taken on the Federal return for taxpayer's or spouse's blindness [IRC §151(d)]. Subtract $500 for each exemption taken on the Federal return for a qualified dependent [IRC §151(c)]. The taxpayer may also subtract $500 for the spouse if they are making separate returns, and if the spouse, for the calendar year in which the tax year of the taxpayer begins, has no gross income.

(5) Subtract taxes based on or measured by income which were paid to a political subdivision of a state other than Indiana. Such payment must be verified by filing with the taxpayer's return a withholding statement and a statement from the taxing authority indicating the taxes withheld and paid to such entity.

(6) Add back an amount equal to the ordinary income portion of a lump-sum distribution from a qualified pension or profit-sharing plan if the distribution is taxable under Internal Revenue Code §402(e).

(7) Subtract items included in Federal taxable income as a recovery of items previously taken as an itemized deduction on the Federal return.

(8) Subtract all amounts received as supplemental railroad retirement benefits which were not previously deducted.

(9) Prorate modifications 3, 4, and 5 *[subsections 3, 4, and 5 of this section]* above if the taxpayer is a nonresident or part-year resident of Indiana. These modifications must be reduced to an amount which bears the same ratio to the total allowable modifications as the taxpayer's Indiana Adjusted Gross Income before allowing modifications 3 and 4 *[subsections 3 and 4 of this section]* above bears to his total Adjusted Gross Income. However, married taxpayers residing in different states who elect to file separate returns are entitled to the same number of exemptions that each claimed on their separate federal returns.

EXAMPLE: John Smith moves to Indiana from Ohio in June of 1978. His 1978 Adjusted Gross Income while living and working in Ohio was $10,000. His 1978 Adjusted Gross Income after moving to Indiana is $15,000. John is single, under 65, not blind, and he has one dependent. Before proration, he would be entitled to $1500 in exemptions from his Indiana Adjusted Gross Income (a $1000 personal exemption plus a $500 exemption for his dependent). However, he must prorate his exemptions on the ratio of

$$\frac{\text{Indiana Adjusted Gross Income.}}{\text{Total Adjusted Gross Income}}$$

Thus, he will be allowed $900 in exemptions from his Indiana Adjusted Gross Income

$$\$1500 \times \frac{15{,}000}{25{,}000} = \$900$$

EXAMPLE: Dick and Nancy Martin are a married couple living apart. Dick is a resident of California, while Nancy is an Indiana resident. The Martins have three children. On their separate federal returns, Dick claimed two of the children as exemptions, while Nancy claimed the other one. Therefore, on her Indiana income tax return, Nancy is entitled to $1500 in exemptions (a $1000 personal exemption plus a $500 exemption for the dependent claimed on her federal return) assuming she has at least $1000 in adjusted gross income.

(10) Military Personnel:

A deduction is allowed those Indiana residents who are members of the active and reserve units of the United States Armed Forces. Members of the Army, Navy, Air Force, Coast Guard, Marine Corps, Merchant Marine, Indiana Army National Guard, or Indiana Air National Guard may deduct, as a modification from adjusted gross income on the individual income tax return, an amount equal to the military compensation received or $2,000.00, whichever is less.

As a resident of Indiana, an individual or the individual's surviving spouse is allowed an adjustment up to $2,000.00 for retirement pay or survivor's benefits received as the result of the individual's active or reserve service in the armed forces of the U.S. provided that: (1) The individual or the individual's surviving spouse is at least sixty years of age on the last day of the taxable year, and (2) The Credit for the Elderly is not claimed. However, if a taxpayer has active duty, reserve and/or retirement pay in one tax year, in no case may the total deduction for military pay exceed $2000. If both the taxpayer and spouse receive military compensation, both would qualify for this deduction. Military withholding statements or retirement or survivor's benefit statements must be attached to the individual income tax return in order to claim this deduction. Military personnel on active or reserve duty who are afforded the $2000 deduction are limited in the amount of deductions related to military income, i.e., unreimbursed travel expenses, which they may take pursuant to Regulation 6-3-1-3.5(a)(010) *[45 IAC 3.1-1-1]*. The Taxpayer may take as a deduction for Indiana Adjusted Gross Income Tax purposes that percentage of his total deductions which is produced when the taxpayer's military income less the $2000 deduction is divided by his total military income.

EXAMPLE: Major Jones is an Indiana resident earning $40,000 in military pay during 1979. As a part of his duties, he is required to do some traveling for which he is not reimbursed. His 1979 traveling expenses are $3000. However, since he is eligible for the $2000 military pay deductions, these traveling expenses must be prorated on the ratio of

$$\frac{\text{military income - \$2000.}}{\text{military income}}$$

Thus, he is entitled to a deduction of $2850 for traveling expenses

$$\left(\$3000 \times \frac{38{,}000}{40{,}000} = \$2850\right)$$

(11) Subtract the taxpayer's share of income from a partnership subject to Adjusted Gross Income Tax, Gross Income Tax, or Supplemental Net Income Tax under IC 6-3-7-1(b).

(12) Subtract a civil service annuity adjustment calculated as follows:

From the first two thousand dollars ($2000) received during the taxable year from a federal civil service annuity that is included in Adjusted Gross Income under §62 of the Internal Revenue Code, subtract the total amount of railroad retirement benefits and social security benefits received during the tax year.

In order to claim this deduction, the individual must be at least 62 years of age by the end of the tax year, and must not claim the Credit for the Elderly contained in IC 6-3-3-4.1 *[Repealed by P.L.25-1981, SECTION 9.]*.

EXAMPLE: Jane Johnson is retired on a federal civil service annuity. She is 64 years old, and does not claim the Credit for the Elderly. During 1980, Jane's annuity payments were $8400 and her social security benefits were $900. In calculating her civil service annuity adjustment, Jane will subtract her social security benefits of $900 from the first $2000 of her annuity. Therefore, Jane's adjustment is $1100 ($2000 - $900 = $1100).

EXAMPLE: George Black is retired on a federal civil service annuity. He is 78 years old, and does not claim the Credit for the Elderly. During 1979, George's annuity payments were $1800. He received $1500 in social security benefits, and $400 in railroad retirement benefits. In calculating his civil service annuity adjustment, George must subtract his social security benefits of $1500, and his railroad retirement benefits of $400 from his annuity. Therefore, George cannot claim the civil service annuity adjustment $1800 - $1500 - $400 is less than zero). Income of $1800 must be reported for Indiana tax purposes. *(Department of State Revenue; Reg. 6-3-1-3.5(a)(050); filed Oct 15, 1979, 11:15 am: 2 IR 1512; errata, 2 IR 1743)*

45 IAC 3.1-1-6 Net operating loss deduction for individuals

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3-1-17; IC 6-3-2-3.5

Sec. 6. Net Operating Loss for Individuals. The following provisions pertain to the use of a Federal net operating loss deduction as it applies to an individual subject to the Indiana Adjusted Gross Income Tax Act. The amount of the net operating loss that may be carried back and forward for Indiana income tax purposes shall be that portion of the Federal net operating loss allocated to Indiana for the taxable year the operating loss is sustained.

The amount of the Indiana loss to be carried back and forward will be the Federal net operating loss after:

(1) All modifications required under IC 6-3-1-3.5 applicable to the net loss in the year the loss was incurred; and

(2) Apportionment as to the source in the case of nonresident individuals in the same manner that income for such nonresident individuals is required to be apportioned.

The net operating loss of an individual is computed in the same manner as the Adjusted Gross Income is computed for Indiana tax purposes except that:

(1) No operating loss deduction from a prior or succeeding year can be used in computing a current operating loss.

(2) Captial *[sic.]* losses are allowed only to the extent of the captial *[sic.]* gain. Nonbusiness captial *[sic.]* losses cannot exceed nonbusiness capital gain even though you have an excess of business capital gains over business capital losses.

(3) In the event that the net operating loss carried back or carried forward exceeds the taxable adjusted gross income of the year to which it is carried, the 50% capital gain deduction for the excess of net long term capital gain over net short term capital loss cannot be considered.

(4) Personal exemptions and exemptions for dependents cannot be claimed when computing the loss.

(5) Nonbusiness deductions may not be used–those deductions used in lieu of the standard deduction for Federal tax purposes. Nonbusiness deductions for Indiana include a self-employed individual's contributions on his own behalf to a retirement plan under which he is covered. This amount of contribution must be deducted from dividends, interest and other miscellaneous income. Generally, other nonbusiness expenses (itemized deductions) cannot be used to offset nonbusiness income in determining the Indiana net operating loss.

Example 1 will present calculations used in determining the carryback and carryforward of losses for Indiana Adjusted Gross Income Tax purposes. See Example 1.

In applying for refund as a result of a net operating loss, the loss must be fully explained on an attached schedule. Federal Schedule 1045 may be used as a supporting document; however, all modifications required in determining Indiana adjusted gross income must be contained in the schedule. Adjustments also must be made for credit for the elderly (retirement income credit if applicable), and credit for taxes paid to other states where applicable.

EXAMPLE 1
NET OPERATING LOSS

	1973	1974	1975	1976	1977
Salaries	5,000.00	5,000.00	2,000.00	8,000.00	2,000.00
Interest less U.S. Govt. Bd. Interest	300.00	200.00	400.00	700.00	500.00
Schedule C–Income (Loss)	8,000.00	4,000.00	9,000.00	(20,000.00)	(35,000.00)
Schedule F–Income (Loss)	3,000.00	3,000.00	2,000.00	(1,500.00)	(10,000.00)
Tax Add Back	1,200.00	2,300.00	1,800.00	2,500.00	3,000.00
Schedule D–Net nonbusiness Long Term Capital Gain (Loss) Before 50% Exclusion	3,000.00	(1,000.00)			6,000.00
Business Net Capital Gain or (Loss)	(4,000.00)	1,000.00	2,000.00	3,000.00	(7,000.00)
50% Capital Gain Deduction	(1,500.00)	–	(1,000.00)	(1,500.00)	(3,000.00)
Self-employed Retirement Plan (a) (Reduces nonbusiness Income)	(200.00)	(200.00)	(200.00)	(200.00)	(300.00)
Adjusted Gross Income per IT-40	14,800.00	14,300.00	16,000.00	(9,000.00)	(43,800.00)
Adjustments in computing net operating loss (loss year only) Add back 50% capital gain deduction				1,500.00	3,000.00

Adjusted gross income to be considered in absorbing Individual's Net Operating Loss	14,800.00	14,300.00	16,000.00	(7,500.00)	(40,800.00)
Net Operating Loss Deduction					
1976 carryback to 1973	(7,500.00) (b)				
1977 carryback to 1974		(40,800.00) (c)			
1977 carryback to 1975–Note 1			(25,500.00) (d)		
Adjusted gross income after carryback	7,300.00	-0-	-0-	-0-	-0-

Note 1: Carryover of 1977 loss to 1975	$14,300.00	Note 2: Carryover to 1978	
Adjusted gross income per 1974 return		Adjusted gross income per 1975 return	$16,000.00
Add nonbusiness capital loss	1,000.00	Add 50% Capital Gain Deduction	1,000.00
	15,300.00		17,000.00
1977 loss	(40,800.00)	Carryover from 1974–Note 1	(25,500.00)
Carryover to 1975	(25,500.00)	Carryover to 1978	(8,500.00)

Key: (a) This amount must be used to reduce nonbusiness type income–interest, dividends, etc.
(b) The amount to be carried to the 1973 Amended Return and reported as other losses.
(c) Carry to 1974 Amended Return
(d) Carry to 1975 Amended Return

(Department of State Revenue; Reg 6-3-1-3.5(a)(060); filed Oct 15, 1979, 11:15 am: 2 IR 1515; errata, 2 IR 1743)

45 IAC 3.1-1-7 Allocation of income among states; reciprocity

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3-1-17; IC 6-3-2-2; IC 6-3-2-3.5; IC 6-3-5-1

Sec. 7. Allocation and Apportionment of Unearned Income for Individuals. (1) Interest, dividends, except earnings from Subchapter S corporations, rents and royalties are generally taxed by the state of legal residence.

(2) Income from a pension, annuity, profit-sharing, or stock-option plan that meets the qualifications of the Internal Revenue Code is taxed by the state of legal residence. Lump sum distributions from qualified plans are taxed by the state which, at the time of the distribution, is the taxpayer's legal residence. Whether a plan meets the qualifications of the Internal Revenue Code is determined by the Internal Revenue Service.

(3) Deferred compensation, other than that from a qualified retirement plan as described above, is directly attributable to services performed, and is taxed by the state where the services were performed.

(4) Accumulated vacation, bonus, serverance *[sic.]* and sick pay is directly attributable to services performed and is taxed by the state where the services were performed.

(5) Taxpayers with income attributable to services performed in the past (3 & 4 *[subsections 3 and 4 of this section]* above), who performed those services in more than one state, must report this income for Indiana tax purposes if Indiana was the last state in which the taxpayer was employed prior to retirement.

(6) Indiana residents with income from partnerships and Subchapter S corporations are subject to Adjusted Gross Income Tax on their distributive share of partnership or corporate income. Nonresidents with income from partnerships and Subchapter S corporations doing business in the state are also subject to Adjusted Gross Income Tax on their distributive shares of income. However, such income is apportioned to this state using the 3-factor formula outlined in IC 6-3-2-2(b) if the partnership or Subchapter S corporation is doing business both within and without the state.

(7) Taxpayers with any of the types of income outlined in this regulation *[45 IAC 3.1-1-7]* who are taxed on such income by both Indiana and another state may be allowed a credit against their Indiana Adjusted Gross Income Tax liability for taxes paid to the other state. Such creidt *[sic.]* will be given only if the taxpayer meets the requirements of Regulations 6-3-3-3(a)(010) *[45 IAC 3.1-1-74]* or 6-3-3-3(b)(010) *[45 IAC 3.1-1-77]*.

(8) Reciprocity will apply in the usual manner to deferred compensation that consists of wages. [See Regulation 6-3-5-1(010) *[45 IAC 3.1-1-115]*.] All income other than wages such as pension, annuity, profit-sharing, and stock-option income is not covered by reciprocal agreements with other states. *(Department of State Revenue; Reg 6-3-1-3.5(a)(070); filed Oct 15, 1979, 11:15 am: 2 IR 1516; errata, 2 IR 1743)*

45 IAC 3.1-1-8 Definition of adjusted gross income for corporations

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3-1-17; IC 6-3-2-2; IC 6-3-2-3.5

Sec. 8. "Adjusted Gross Income" for Corporations Defined. "Adjusted Gross Income" with respect to corporate taxpayers is "taxable income" as defined in Internal Revenue Code–section 63 with three adjustments:

(1) Subtract income exempt from tax under the Constitution and Statutes of the United States. [See Regulation 6-3-1-3.5(a)(050)(a) *[45 IAC 3.1-1-5(a)]*.]

(2) Add back deductions taken pursuant to Interanl *[sic.]* Revenue Code-section 170 (Charitable contributions);

(3) Add back deductions taken pursuant to Internal Revenue Code-section 63 for:

(a) Taxes based on or measured by income and levied at the state level. For purposes of this subsection, the Indiana Gross Income Tax is a state tax measured by income and must be added back (see Miles v. Department of Treasury, 209 Ind. 172 (1935));

(b) Property taxes levied by a political subdivision of any state; and

(c) Indiana motor vehicle excise taxes, except for that portion of the tax not considered an ad valorem tax.

(Department of State Revenue; Reg 6-3-1-3.5(b)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1517; errata, 2 IR 1743)

45 IAC 3.1-1-9 Allowance of corporate net operating loss; modifications

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3-2-2

Sec. 9. Corporate Net Operating Loss. The net operating loss as described in Internal Revenue Code §172 is an allowable deduction for corporations in computing Indiana Adjusted Gross Income. The amount of the loss which may be deducted is the Federal net operating loss after:

(1) All modifications required under IC 6-3-1-3.5(b); and

(2) After apportionment, if the taxpayer is doing business in more than one state and is required to apportion his income.

The computation of the loss is subject to the following exceptions, limitations, and additions:

(1) For those corporations subject to apportionment, nonbusiness deductions which are attributable to nonbusiness income are allowed only to the extent that such nonbusiness deductions were attributable to Indiana nonbusiness income.

(2) There shall be included in computing gross income only the net amount of exempt interest (i.e., U.S. Government bond interest decreased by the amount of interest paid or accrued to purchase or carry investments earning such interest).

(3) In the case of a taxpayer whose entire net income is assigned to Indiana (without apportionment) under IC 6-3-2-2 the net operating loss of such business is determined in the same manner as if the entire gross income were assignable to the State and the entire amount of the net operating loss is carried back or forward as a deduction in computing Indiana adjusted gross income.

(4) Losses connected with income-producing activities, the income from which is not required to be either assigned to this State or included in computing taxable net income, are not allowed in computing a net operating loss.

(5) If a taxpayer's business is conducted partly within and partly without the State, and a net operating loss is sustained, the net operating loss is carried back or forward and deducted in arriving at Indiana adjusted gross income subject to apportionment. The amount by which Indiana adjusted gross income is reduced by reason of the net operating loss deduction may not exceed the amount of net operating loss deduction determined to be from Indiana sources.

The computation of a corporate net operating loss pertains only to the determination of the taxpayer's Adjusted Gross and Supplemental Net Income Tax liability. The loss cannot be taken in computing the Indiana Gross Income Tax. Moreover, taxpayers must irrevocably elect, by the due date of the annual return (including extensions of time for filing) for the tax year in which the loss is sustained, the same carryback and carryforward treatment of the loss for Adjusted Gross Income Tax purposes as was elected for Federal tax purposes.

Any refund of adjusted gross income tax due as a result of a net operating loss cannot be reduced below the amount of gross income tax due. In applying for a refund as a result of a net operating loss, Schedule IT-20NOL is required, with a complete explanation. A taxpayer must claim a refund for a net operating loss carryback within three years of the original due date of the return for the loss year. If a taxpayer fails to claim a carryback loss within the time prescribed, the effect of the loss must be computed by the proper carryback even though no refund will be allowed in a situation where the taxpayer has other losses in years still within the statute of limitations. For a net operating loss carryforward, a taxpayer must claim a refund within the time prescribed

by Regulation 6-3-6-4(a)(010). Only the unused portion of the net operating loss after the proper carryback or carryforward will be available for the refund if the statute of limitations has expired to claim the original loss. Adjustments will also be required in re-determining the credit for contributions to Indiana colleges and universities. (See Example 1).

When a corporate merger takes place or a new subsidiary is included in a consolidated Indiana Adjusted Gross Income Tax return, the Department follows the guidelines of the Internal Revenue Code as to the treatment of net operating losses sustained by any of the corporations involved. For requirements of filing consolidated returns, see Regulation 6-3-4-14(010)-(030) *[45 IAC 3.1-1-110–45 IAC 3.1-1-112]*.

Example 1

Corporations Filing Indiana Income Tax Returns Adjusted Gross Income Tax Computation

1.	Net federal taxable income (loss) (before net operating loss or special deductions)	$	(85,000)	
2.	Adjustments, if any (other than Indiana net operating loss deductions)		-0-	
3.	Net taxable income (loss) after adjustments	$	(85,000)	
4.	Add back:			
	(a) All state income taxes	$	5,000	
	(b) All real estate and personal property taxes	$	5,000	
	(c) All charitable contributions, gifts, etc.		-0-	
5.	Total lines 4 (a), (b), and (c)	$	10,000	
6.	Deduct interest of U.S. government obligations included on federal return	$	5,000	
7.	Subtotal (line 3 plus line 5 less line 6) (If you do not apportion enter here and on line 13; if you do apportion, continue on the next line)	$	(80,000)	
8.	Enter net nonbusiness income from all sources	$	13,000	(a)
9.	Net taxable business income (Line 7 less 8)	$	(93,000)	
10.	Apportionment percentage		50%	
11.	Business income apportioned to Indiana	$	(46,500)	
12.	Indiana nonbusiness income	$	13,000	
13.	Total Indiana adjusted gross income (loss) (line 11 plus line 12) (before Indiana net operating loss carryback/ carryforward deduction)	$	(33,500)	(b)
14.	Deduct apportioned Indiana net operating loss carryback/carry-forward		-0-	(c)
15.	Total Indiana adjusted gross income (loss)	$	(33,500)	

(a) Interest income assumed to be $15,000 in ths example, with $2,000 of nonbusiness expenses.

(b) This figure is the Indiana net operating loss for the current year which can be applied against the income in the three preceeding *[sic.]* years and five succeeding years. Effective January 1, 1977, a taxpayer may irrevocably elect at the time the return is due for the loss year to forego a carryback and merely carryforward the loss pursuant to the Internal Revenue Code. All taxpayers will be required to make the same election for federal income tax purposes as for State income tax purposes.

(c) On this line you would deduct (or add to the current year's loss) any apportioned Indiana carryback/carryforward from other taxable years.

(Department of State Revenue; Reg 6-3-1-3.5(b)(020); filed Oct 15, 1979, 11:15 am: 2 IR 1517; errata, 2 IR 1743)

45 IAC 3.1-1-10 Definition of adjusted gross income for fiduciaries

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3-1-17

Sec. 10. Fiduciary Adjusted Gross Income Defined. Adjusted gross income shall mean "taxable income" as defined in Section 641 (b) of the Internal Revenue Code, reduced by interest on U.S. Government obligations and other income exempt from taxation under the Adjusted Gross Income Tax Act and the United States Constitution. Accordingly, for purposes of the Adjusted Gross Income Tax Act, adjusted gross income will be equal to the net taxable income required to be reported on the U.S. Fiduciary Income Tax Return (Form 1041) reduced by exempt income as defined in this regulation *[45 IAC 3.1-1-10]*. *(Department of State Revenue; Reg 6-3-1-3.5(c)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1518; errata, 2 IR 1743)*

45 IAC 3.1-1-11 Exemptions for trusts and estates

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5

Sec. 11. Exemptions. As *[sic.]* estate can deduct a personal exemption of $600. A trust which is required to distribute all of the income currently, a simple trust, is allowed an exemption of $300. All other trusts, complex trusts, can deduct a $100 exemption. If final distribution of assets has been made during the year, all income of the estate or trust must be reported to the beneficiaries without reduction for the amount claimed for the exemption. *(Department of State Revenue; Reg 6-3-1-3.5(c)(020); filed Oct 15, 1979, 11:15 am: 2 IR 1518; errata, 2 IR 1743)*

45 IAC 3.1-1-12 Resident and nonresident trusts and estates

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5

Sec. 12. Determination of Indiana Taxable Adjusted Gross Income for Fiduciaries. For purposes of the taxes imposed upon the income of estates or trusts and paid by the fiduciary thereof, estates and trusts are classified as either resident or nonresident. The residence of an estate or trust is the place where it is administered.

Resident estates or trusts are taxable on all income regardless of where earned. Deductions are limited to those deductions taken and allowable on the Federal Fiduciary Return, Form 1041.

Nonresident estates and trusts are taxable in Indiana on all income derived from Indiana sources. Income derived from sources within Indiana is divided into business and nonbusiness income.

(A) Business income is income derived from transactions in the regular course of the taxpayer's trade or business, including income from intangibles where intangibles are an integral part of that business. Business income from a business located in Indiana would be included as income for a nonresident estate or trust. Such income would include rents or leases from property located in Indiana.

(B) Nonbusiness income would include all other income other than business income. Such income shall be considered as derived from sources within Indiana if the property from which the income is derived has a situs in Indiana, and the property does not have a situs in any other state and the taxpayer has a commercial domicile in Indiana, or in the case of patent, or copyright royalties, the patent or trademark is either utilized in Indiana or utilized in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in Indiana. *(Department of State Revenue; Reg 6-3-1-3.5(c)(030); filed Oct 15, 1979, 11:15 am: 2 IR 1518; errata, 2 IR 1743)*

45 IAC 3.1-1-13 Deduction for distribution from estate or trust

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5

Sec. 13. Distribution Deduction of Distributable Net Income from A Fiduciary. A deduction for the distribution of net income is allowed for Indiana adjusted gross income tax purposes in the same manner as provided under section 651 and 661 of the Federal Internal Revenue Code. In the case of a "simple trust," the trustee is required to distribute all of its income currently, whether or not he actually does so. The distribution deduction is mandatory.

The distribution deduction as described in section 651 and 661 of the Internal Revenue Code is defined to mean that portion of the distributable net income required to be distributed to the beneficiaries.

When an estate or trust is to be closed, or is required to distribute current income during the taxable year and there is distributable net income, the distribution deduction must be taken and the distributable net income allocated to the beneficiary's Individual Adjusted Gross Income Tax Return, Form IT-40. *(Department of State Revenue; Reg. 6-3-1-3.5(c)(040); filed Oct 15, 1979, 11:15 am: 2 IR 1519; errata, 2 IR 1743)*

45 IAC 3.1-1-14 Report of distribution; allocation by nonresident estate or trust

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3-2-2

Sec. 14. Allocation of Distributable Net Income Distributed to Beneficiaries. If an estate or trust must use the distribution deduction, then such estate or trust must complete the supplemental schedule of Form IT-41 (Schedule B).

The fiduciary will allocate the distributable net income to the beneficiaries and will show the character of the distributable net income required to be distributed.

If there is a distribution of distributable net income, the fiduciary will give the names, addresses and social security numbers of the beneficiaries.

The fiduciary will also show the amount of income required to be distributed by reason of a trust instrument.

Nonresident trusts and estates operating businesses in Indiana will allocate and apportion their income using the 3-factor formula outlined in IC 6-3-2-2(b). *(Department of State Revenue; Reg 6-3-1-3.5(c)(050); filed Oct 15, 1979, 11:15 am: 2 IR 1519; errata, 2 IR 1743)*

45 IAC 3.1-1-15 Application of excess deductions of estate or trust

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5

Sec. 15. Allocation of Excess Deductions. After the fiduciary of a trust or an estate in the year of termination has applied the allowable deductions against the income to which the deductions were directly attributable, he may apply the excess of such deductions against any item of gross income subject to the following limitations.

Deductions allocable to tax exempt income must be used only against tax exempt income. Any excess of such allocated deductions cannot be used to offset taxable income. Therefore, deductions allocable to tax exempt income will not be taken on Form IT-41.

Excess deductions other than deductions from business income, cannot be extended to the beneficiary in the year of termination since these deductions are itemized deductions for Federal tax purposes and not allowable when filing the Individual Income Tax Return. *(Department of State Revenue; Reg 6-3-1-3.5(c)(060); filed Oct 15, 1979, 11:15 am: 2 IR 1519; errata, 2 IR 1743)*

45 IAC 3.1-1-16 Final account and certificate of clearance of fiduciary

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5

Sec. 16. Certificate of Clearance. A fiduciary entity opened before June 30, 1963, must file with the Fiduciary Section of the Indiana Department of Revenue a final accounting, showing proof of payments prior to July 1, 1963, and a Form IT-41 tax return, in order to receive a certificate of clearance.

If a fiduciary entity is opened after June 30, 1963, the fiduciary will not receive a certificate of clearance and will not submit to the Department a final accounting. However, the fiduciary shall allege in his final accounting that "an adjusted gross income tax return has been properly filed."

If the fiduciary was subject to a tax, then he should allege in his final acccounting *[sic.]* that "any and all taxes due or assessable by the Income Tax Division of the Indiana Department of Revenue against the fiduciary has been paid." *(Department of State Revenue; Reg 6-3-1-3.5(c)(070); filed Oct 15, 1979, 11:15 am: 2 IR 1519; errata, 2 IR 1743)*

45 IAC 3.1-1-17 Net operating losses and capital losses for fiduciaries and beneficiaries

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5

Sec. 17. Net Operating Losses and Capital Losses for Fiduciaries. For Adjusted Gross Income Tax purposes, fiduciaries and beneficiaries may use the same carryback and carryforward provisions for net operating losses and capital losses as provided in the Internal Revenue Code subject to the applicable modifications of the Indiana Adjusted Gross Income Tax Act. *(Department of State Revenue; Reg 16-3-1-3.5(c)(080); filed Oct 15, 1979, 11:15 am: 2 IR 1520; errata, 2 IR 1743)*

45 IAC 3.1-1-18 Charitable contributions of trust estate; exempt trusts

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5

Sec. 18. Charitable Contribution Deduction. The fiduciary shall be allowed to deduct without limitation any amount of the gross income of the estate or trust which by the terms of the will or instrument creating the trust, is required to be paid or permanently set aside during the taxable year for a purpose specified in section 170(c) of the Internal Revenue Code, or is to be used exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance or operation of a public cemetery not operated for profit.

In the case of a trust, the charitable contribution deduction will be subject to the limitations of section 681 of the Internal Revenue Code.

Trusts which are exempt from Federal income tax under section 501 of the Internal Revenue Code are also exempt from taxation under the Indiana Adjusted Gross Income Tax Act. *(Department of State Revenue; Reg 6-3-1-3.5(c)(090); filed Oct 15, 1979, 11:15 am: 2 IR 1520; errata, 2 IR 1743)*

45 IAC 3.1-1-19 Definition of gross income

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-8

Sec. 19. "Gross Income" Defined. "Gross income" for Adjusted Gross Income Tax purposes is gross income as defined in Internal Revenue Code § 61. See Regulation 6-3-1-3.5(a)(020) *[45 IAC 3.1-1-2]*. *(Department of State Revenue; Reg 6-3-1-8(010); filed Oct 15, 1979, 11:15 am: 2 IR 1520; errata, 2 IR 1743)*

45 IAC 3.1-1-20 Definition of corporation

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-10

Sec. 20. "Corporation" Defined. The term "corporation" is used in the Act in a general sense and includes any form of businesss *[sic.]* association whose characteristics more nearly resemble those of a corporation than those of a trust or partnership, including corporations, partnerships with corporate members, associations, joint stock companies, real estate investment trusts, not-for-profit associations, business trusts and Massachusetts trusts. Proprietorships or partnerships formerly taxable under Internal Revenue Code § 1361 are now taxed as individuals. Internal Revenue Code § 1361 was repealed in 1969; thus proprietorships and partnerships taxable under this subsection are no longer included within the definition of "corporation."

Any receiver, trustee, conservator, liquidator, or other fiduciary controlling any of the above is also a "corporation" under the Act. *(Department of State Revenue; Reg 6-3-1-10(010); filed Oct 15, 1979, 11:15 am: 2 IR 1520; errata, 2 IR 1743)*

45 IAC 3.1-1-21 Definition of resident

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-12

Sec. 21. "Resident" Defined. An Indiana resident is:

(a) Any individual who was domiciled in Indiana during the taxable year, or

(b) Any individual who maintains a permanent place of residence in this state and spends more than 183 days of the taxable year within this state; or

(c) Any estate of a deceased person defined in (a) or (b) *[subsections (a) or (b) of this section]*, or

(d) Any trust which has a situs within this state.

(Department of State Revenue; Reg 6-3-1-12(010); filed Oct 15, 1979, 11:15 am: 2 IR 1520; errata, 2 IR 1743)

45 IAC 3.1-1-22 Definition of domicile

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-12

Sec. 22. "Domicile" Defined. For the purposes of this Act, a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

(1) Purchasing or renting residential property

(2) Registering to vote

(3) Seeking elective office

(4) Filing a resident state income tax return or complying with the homestead laws of a state

(5) Receiving public assistance

(6) Titling and registering a motor vehicle

(7) Preparing a new last will and testament which includes the state of domicile. *(Department of State Revenue; Reg 6-3-1-12(020); filed Oct 15, 1979, 11:15 am: 2 IR 1520; errata, 2 IR 1743)*

45 IAC 3.1-1-23 Special cases of residency

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-12

Sec. 23. Residency As It Affects Tax Liability. (1) Taxpayer Moving to Indiana

When a taxpayer moves to Indiana and becomes a resident and/or domiciliary of Indiana during the taxable year, Indiana will not tax income from sources outside Indiana which the taxpayer received prior to becoming an Indiana domiciliary. Indiana will, however, assess adjusted gross income tax on all taxable income after the taxpayer becomes an Indiana resident.

(2) Taxpayer Moving from Indiana

Any person who, on or before the last day of the taxable year, changes his residence or domicile from Indiana to a place without Indiana, with the intent of abiding permanently without Indiana, is subject to adjusted gross income tax on all taxable income earned while an Indiana resident. Indiana will not tax income of a taxpayer who moves from Indiana and becomes an actual domiciliary of another state or country except that income received from Indiana sources will continue to be taxable.

(3) Nonresident Citizens

An individual from Indiana who is permitted to file Federal income tax returns as a nonresident citizen is considered as being domiciled in Indiana and his income taxable as a resident citizen, if he maintains a place of abode in Indiana immediately prior to residing in a foreign country as a nonresident citizen of the United States, and has not permanently established his domicile in a foreign country or in another state.

The fact that ordinary rights of citizenship, including voting at public elections are present but not exercised, shall not prevent a person from being classified as a resident if he meets the other tests set out in this regulation *[45 IAC 3.1-1-23]*.

(4) Part-Time Resident Individuals

Persons residing in Indiana but living part of the year in other states or countries will be deemed residents of Indiana unless it can be shown that the abode in the other state or country is of a permanent nature. Domicile is not changed by removal therefrom for a definite period or for a particular purpose. A domicile, once obtained, continues until a new one is acquired.

(5) Military personnel

Indiana residents who become members of the military service remain Indiana residents regardless of their geographical assignments. Military members can change their legal residence only by filing DD Form 2058, State of Legal Residence Certificate.

(Department of State Revenue; Reg 6-3-1-12(030); filed Oct 15, 1979, 11:15 am: 2 IR 1520; errata, 2 IR 1743)

45 IAC 3.1-1-24 Definition of nonresident

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-13

Sec. 24. "Nonresident" Defined. A nonresident of Indiana is any individual, estate, trust, or other entity not included in the definition of "Resident" given in Regulation 6-3-1-12(010) *[45 IAC 3.1-1-21]*. *(Department of State Revenue; Reg 6-3-1-13(010); filed Oct 15, 1979, 11:15 am: 2 IR 1521; errata, 2 IR 1743)*

45 IAC 3.1-1-25 Tax liability of nonresident

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-13; IC 6-3-2-2

Sec. 25. Nonresident's Indiana Adjusted Gross Income Tax Liability. All persons who are not residents of Indiana are required to report that portion of their entire income directly or constructively from or attributable to business, activities or any other source within Indiana, with the exception of nonresident members of the armed forces receiving compensation for military duty in Indiana. These latter persons will not be subject to the adjusted gross income tax on their military pay. A nonresident must include on his tax return all gross income received from a business, activities or any other source in Indiana whether taxable or not. In order to avail himself of the deduction of non-taxable income, the nonresident must first include the non-taxable portion of his income in the total gross income figure.

In order to qualify as a nonresident, the taxpayer shall submit proof, upon demand by the department, of having indicated his bona fide intention to reside permanently elsewhere before the last day of the taxable year.

Such person changing his domicile during a taxable year may also be required to furnish evidence of compliance with the requirements of the other state with respect to taxation and the qualification as a resident citizen thereof. *(Department of State Revenue; Reg 6-3-1-13(020); filed Oct 15, 1979, 11:15 am: 2 IR 1521; errata, 2 IR 1743)*

45 IAC 3.1-1-26 Definition of person

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-14

Sec. 26. "Person" Defined. Statutory definition of "person" is used synonymously with the Act. *(Department of State Revenue; Reg 6-3-1-14(010); filed Oct 15, 1979, 11:15 am: 2 IR 1521; errata, 2 IR 1743)*

45 IAC 3.1-1-27 Definition of taxpayer

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-15

Sec. 27. "Taypayer" *[sic.]* Defined. The term "taxpayer" means any person or corporation subject to taxation under these Regulations *[45 IAC]*. *(Department of State Revenue; Reg 6-3-1-15(010); filed Oct 15, 1979, 11:15 am: 2 IR 1521; errata, 2 IR 1743)*

45 IAC 3.1-1-28 Taxable year

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-16

Sec. 28. "Taxable Year" Defined. The term "taxable year" means the taxable year of the taxpayer as shown on the return required to be filed or filed pursuant to the Internal Revenue Code. When the Internal Revenue Code requires no return to be filed, the taxable year will be the calendar year. *(Department of State Revenue; Reg 6-3-1-16(010); filed Oct 15, 1979, 11:15 am: 2 IR 1521; errata, 2 IR 1743)*

45 IAC 3.1-1-29 Definition of business income

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-20

Sec. 29. "Business Income" Defined. "Business Income" is defined in the Act as income from transactions and activity in the regular course of the taxpayer's trade or business, including income from tangible and intangible property if the acquisition,

management, or disposition of the property are integral parts of the taxpayer's regular trade or business.

Nonbusiness income means all income other than business income.

The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, non-operating income, etc., is of no aid in determining whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is "business income" or "nonbusiness income" is the identification of the transactions and activity which are the elements of a particular trade or business. *(Department of State Revenue; Reg 6-3-1-20(010); filed Oct 15, 1979, 11:15 am: 2 IR 1521; errata, 2 IR 1743)*

45 IAC 3.1-1-30 Trade or business construed

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-20

Sec. 30. Whether An Activity Is A "Trade or Business". For purposes of determining whether income is derived from an activity which is in the regular course of the taxpayer's trade or business, the expression "trade or business" is not limited to the taxpayer's corporate charter purpose of its principal business activity. A taxpayer may be in more than one trade or business and derive business therefrom depending upon but not limited to some or all of the following:

(1) The nature of the taxpayer's trade or business.

(2) The substantiality of the income derived from activities and transactions and the percentage that income is of the taxpayer's total income for a given tax period.

(3) The frequency, number, or continuity of the activities and transactions involved.

(4) The length of time the property producing income was owned by the taxpayer.

(5) The taxpayer's purpose in acquiring and holding the property producing income. *(Department of State Revenue; Reg 6-3-1-20(020); filed Oct 15, 1979, 11:15 am: 2 IR 1522; errata, 2 IR 1743)*

45 IAC 3.1-1-31 Definition of nonbusiness income

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-21

Sec. 31. "Nonbusiness Income" Defined. Statutory definition of "nonbusiness income" is used synonymously with the Act. *(Department of State Revenue; Reg 6-3-1-21(010); filed Oct 15, 1979, 11:15 am: 2 IR 1522; errata, 2 IR 1743)*

45 IAC 3.1-1-32 Definition of commercial domicile

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-22

Sec. 32. "Commercial Domicile" Defined. The term "commercial domicile" is defined in the Act as "the principal place from which the trade or business of the taxpayer is directed or managed." Commercial domicile is not necessarily in the state of incorporation. A corporation that is incorporated in a state, but that has little or no activity in that state, has not established a commercial domicile there.

Each corporation has one, and only one, commercial domicile. Generally, it is where the executive authority of the business is concentrated. However, if such authority is not centralized in one state, then the commercial domicile is the place where the majority of the corporation's daily operational decisions are made. There are several factors to be considered in determining the commercial domicile of a corporation. These factors include, but are not limited to:

(a) The relative amount of revenue from sales in the various states
(b) The relative value of fixed assets in the various states
(c) The principal place of work of a majority of the employees
(d) The place where the corporate records are kept
(e) The principal place of work of the corporate executives
(f) The place where policy and investment decisions are made

(g) The relative amount of decision-making power held by various executives and employees
(h) The place where payments are made on intangibles held by the corporation
(i) Whether income from intangibles held by the corporation is taxable elsewhere
(j) The office from which the Federal income tax return is filed
(k) Information contained in the corporation's annual and quarterly reports
(l) The place where the board of directors meets.
(Department of State Revenue; Reg 6-3-1-22(010); filed Oct 15, 1979, 11:15 am: 2 IR 1522; errata, 2 IR 1743)

45 IAC 3.1-1-33 Definition of compensation
Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-23

Sec. 33. "Compensation" Defined. The term "compensation" is used synonymously with the Act. *(Department of State Revenue; Reg 6-3-1-23(010); filed Oct 15, 1979, 11:15 am: 2 IR 1522; errata, 2 IR 1743)*

45 IAC 3.1-1-34 Definition of sales
Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-23; IC 6-3-1-24; IC 6-3-2-2

Sec. 34. "Sales" Defined. The term "sales" as used in the Act includes all gross receipts which are not subject to allocation under IC 6-3-2-2 (g)–(k), and which are not the compensation of an employee for personal services *[See IC 6-3-1-23]*. Thus any business income of a corporate taxpayer is considered to be from "sales" under this definition, regardless of its actual source. *(Department of State Revenue; Reg 6-3-1-24(010); filed Oct 15, 1979, 11:15 am: 2 IR 1522; errata, 2 IR 1743)*

45 IAC 3.1-1-35 Definition of state
Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-25

Sec. 35. "State" Defined. The term "state" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof. *(Department of State Revenue; Reg 6-3-1-25(010); filed Oct 15, 1979, 11:15 am: 2 IR 1522; errata, 2 IR 1743)*

45 IAC 3.1-1-36 Tax rates
Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-1

Sec. 36. Imposition of Tax. The rate of adjusted gross income tax for individuals is 2%. The rate of adjusted gross income tax for corporations is 3%. *(Department of State Revenue; Reg 6-3-2-1(010); filed Oct 15, 1979, 11:15 am: 2 IR 1522; errata, 2 IR 1743)*

45 IAC 3.1-1-37 Allocation and apportionment of income of multistate corporations
Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3-2-2

Sec. 37. Division of Income in General. Corporations doing business both within and without Indiana shall determine their income from Indiana sources through the use of the allocation and apportionment provisions contained in IC 6-3-2-2(b)-(n), which generally follow the Uniform Division of Income For Tax Purposes Act. The multistate corporation must first determine what part of its adjusted gross income constitutes business income [See Regulation 6-3-1-20(010) *[45 IAC 3.1-1-29]*] and what part is nonbusiness income. Business income is apportioned to this state based on the 3-factor (or other approved) formula. Nonbusiness income is allocated to specific jurisdictions pursuant to paragraphs (g)-(k) of IC 6-3-2-2. Business income apportioned to this state plus nonbusiness income allocated to Indiana plus the modifications required by IC 6-3-1-3.5(b) gives the total of the taxpayer's

net income which is subject to adjusted gross income tax. As used above, the word "apportionment" refers to the division of income between states by use of the 3-factor (or other approved) formula; "allocation" means the assignment of income to a particular jurisdiction. *(Department of State Revenue; Reg 6-3-2-2(b)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1523; errata, 2 IR 1743)*

45 IAC 3.1-1-38 Definition of doing business

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 38. Doing Business. For apportionment purposes, a taxpayer is "doing business" in a state if it operates a business enterprise or activity in such state including, but not limited to:

(1) Maintenance of an office or other place of business in the state

(2) Maintenance of an inventory of merchandise or material for sale distribution, or manufacture, or consigned goods

(3) Sale or distribution of merchandise to customers in the state directly from company-owned or operated vehicles where title to the goods passes at the time of sale or distribution

(4) Rendering services to customers in the state

(5) Ownership, rental or operation of a business or of property (real or personal) in the state

(6) Acceptance of orders in the state

(7) Any other act in such state which exceeds the mere solicitation of orders so as to give the state nexus under P.L.86-272 to tax its net income.

As stated in Regulation 6-3-2-2(b)(010) *[45 IAC 3.1-1-37]*, corporations doing business in Indiana as well as other states are subject to the allocation and apportionment provisions of IC 6-3-2-2(b)-(n). *(Department of State Revenue; Reg 6-3-2-2(b)(020); filed Oct 15, 1979, 11:15 am: 2 IR 1523; errata, 2 IR 1743)*

45 IAC 3.1-1-39 Apportionment of business income by corporations

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 39. Apportionment of Business Income. All corporations subject to the allocation and apportionment provisions of IC 6-3-2-2(b)-(n) shall apportion their business income by use of the 3-factor formula described below, unless the taxpayer obtains a ruling which permits, or the Department requires, the use of a different formula which more fairly reflects its income from Indiana sources. See IC 6-3-2-2(1). The 3-factor formula is as follows:

$$\text{business income} \times \frac{\text{property factor} + \text{payroll factor} + \text{sales factor}}{3}$$

(Department of State Revenue; Reg 6-3-2-2(b)(030); filed Oct 15, 1979, 11:15 am: 2 IR 1523; errata, 2 IR 1743)

45 IAC 3.1-1-40 Property factor for apportionment

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 40. Property Factor. The property factor is a fraction, the numerator of which is the average value of the taxpayer's Indiana property, and the denominator of which is the total value of the taxpayer's property everywhere. As used in this regulation *[45 IAC 3.1-1-40]*, the word "property" includes all real and tangible personal property of the taxpayer, whether owned or rented, which is or could be used to produce business income during the tax period. This includes land, buildings, machinery, inventory, equipment and any other real or tangible personal property used to produce business income, but not coin, currency or intangibles. Property, the income from which is subject to allocation as nonbusiness income, is excluded from the factor. Property producing both business and nonbusiness income is included only to the extent it was used to produce business income. *(Department of State Revenue; Reg 6-3-2-2(c)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1523; errata, 2 IR 1743)*

45 IAC 3.1-1-41 Property included in property factor

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 41. Property Used For the Production of Business Income. The property factor includes all property owned or rented by the taxpayer which is actually used or is available for or capable of being used to produce business income. Property held as reserves or stand-by facilities, or for a reserve source of materials, is included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are included in the factor. Property under construction during the tax period (except inventoriable goods in process) are includable only if and only to the extent it is actually used to produce business income.

Property used or held for the production of business income must remain in the property factor until its permanent withdrawal is established by an identifiable event such as its sale or conversion to the production of nonbusiness income, such as a lease for an extended period of time.

Examples:

(1) The taxpayer closed one of its plants and held the property idle until it was sold five months later. The value of the property is included in the property factor until the date of sale.

(2) Same as in (1) *[subsection (1) of this section]*, except the property is leased until sale. The rental income is business income and the property remains in the property factor until sale.

(3) Same as in (1) *[subsection (1) of this section]*, except the property remains idle for more than 5 years pending sale. At the end of the first 5 years, it is removed from the property factor.

(4) The taxpayer ceases to operate one of the divisions of its business, but holds part of the property of such division solely for investment purposes. It does not thereafter use the property in the regular course of business. At the time the property is converted to investment property, it is removed from the property factor. Any income from the use of the property as an investment is nonbusiness income. *(Department of State Revenue; Reg 6-3-2-2(c)(020); filed Oct 15, 1979, 11:15 am: 2 IR 1523; errata, 2 IR 1743)*

45 IAC 3.1-1-42 Consistency among reports

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 42. Consistency in Reporting. In filing returns with this state, the taxpayer's valuation and treatment of property as business or nonbusiness property must be consistent from year to year. It must also be consistent with the taxpayer's treatment of such property for purposes of returns filed with other states having apportionment statutes and regulations substantially similar to Indiana's. If the taxpayer's Indiana returns are not consistent in these respects, the returns should disclose the nature and extent of the inconsistency. *(Department of State Revenue; Reg 6-3-2-2(c)(030); filed Oct 15, 1979, 11:15 am: 2 IR 1524; errata, 2 IR 1743)*

45 IAC 3.1-1-43 Numerator of property factor

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 43. Property Factor-Numerator. The numerator of the property factor includes the average value of the taxpayer's Indiana property which is used to produce business income. “Indiana property” is all real and tangible personal property owned or rented and used in the state during the tax period. Property in transit between states is considered to be at destination. However, mobile or movable property which may be used in more than one state in the regular course of the taxpayer's business, i.e., rolling stock, construction equipment, leased electronic equipment, etc., shall be included in the numerator based on total time or miles (as applicable) used in the state. See Regulation 6-3-2-2(l)(020) *[45 IAC 3.1-1-63]*. Automobiles assigned to traveling employees are included in the numerator if the employee's compensation is assigned to Indiana under the payroll factor or if the automobile is licensed in Indiana. *(Department of State Revenue; Reg 6-3-2-2(c)(040); filed Oct 15, 1979, 11:15 am: 2 IR 1524; errata, 2 IR 1743)*

45 IAC 3.1-1-44 Valuation of owned property

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 44. Valuation of Owned Property. Property owned by the taxpayer is valued at original cost. If the original cost cannot be ascertained, the property is valued at fair market value as of the date of acquisition by the taxpayer.

"Original cost" does not make allowance for depreciation.

Examples:

(1) The taxpayer, using the calendar year basis of reporting income, acquires a plant in Indiana for $500,000 at the first of the year. In July, it expends $100,000 in remodeling the facility. It claims depreciation for the year of $22,000. The value of the plant for purposes of the property factor is $600,000.

(2) X Corporation merges into Y Corporation during the tax year in a reorganization which is tax-free under the Internal Revenue Code. At the time of the merger, X owned a factory which it originally built ten years earlier at a cost of $1,000,000 and which had a basis of $900,000 due to depreciation. Since the factory is acquired by Y in a transaction in which under the Internal Revenue Code its basis is the same for Y as it was for X, Y will include the property in the property factor at X's original cost: $1,000,000.

(3) Corporation Y acquires the assets of Corporation X in a liquidation by which Y is entitled under Internal Revenue Code § 334(b)(2) to use the original cost of X stock as the basis for X's assets (i.e., stock possessing 80% control of X is purchased and liquidated within 2 years). Y's cost of X's assets is the purchase price of X stock prorated over the assets.

Inventory is included in the property factor in accordance with the valuation method used by the taxpayer for Federal income tax purposes. Property acquired by gift or inheritance is valued at its basis for determining depreciation for Federal income tax purposes.

The taxpayer's owned property is generally valued at its average value at the beginning and ending of the tax year. See Regulation 6-3-2-2 (c) (070) *[45 IAC 3.1-1-46]*. *(Department of State Revenue; Reg 6-3-2-2(c)(050); filed Oct 15, 1979, 11:15 am: 2 IR 1524; errata, 2 IR 1743)*

45 IAC 3.1-1-45 Valuation of rented property

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 45. Valuation of Rented Property. For purposes of computing the property factor, property rented by the taxpayer is valued at eight times its annual net rental rate. "Net rental rate" is the total annual rent paid by the taxpayer, less total annual rent from subrentals received by it which do not constitute business income. In exceptional cases, this may result in a negative number of valuation which is otherwise clearly inaccurate. In such instances, any method which properly reflects the value may be required by the Department or requested by the taxpayer. However, in no case may the net annual rental value be less than an amount which bears the same ratio to total annual rental rate as the property used by it bears to all of the rental property.

Example:

A taxpayer rents a ten-story building for $1,000,000 per year. It uses the first two floors itself and sublets the top eight stories for $1,000,000 per year. The taxpayer's net annual rental rate for the building cannot be less than $200,000.

Subrentals which constitute business income are not deductible in computing net rental rate.

"Annual rental rate" is the amount paid by the taxpayer as rent over a 12-month period. If the property is rented for less than 12 months, the net rent paid for the actual period rented is the annual rental rate. However, if the taxpayer rents property for 12 or more months and the current tax period is less than 12 months (due, for instance, to a reorganization or other such cause) the net rent paid for the short period is the annual rental rate. If the rental term is less than 12 months it is the actual rent paid. Rent from property rented on a month-to-month basis is the actual rent paid due to the uncertain duration of the lease.

"Annual rent" is the actual consideration for use of the property and includes payment of a fixed sum of money or percentage of sales profits or receipts, as well as interest, taxes, insurance, repairs and any other items required as payment under the lease which are meant as additional rent or in lieu of rent. It does not include amounts paid as service charges such as utilities, janitor services, etc.

Leasehold improvements are valued as owned property regardless of whether the taxpayer is entitled to remove them upon termination of the lease or not. Hence, the original cost of the improvements is included in the property factor. *(Department of State Revenue; Reg 6-3-2-2(c)(060); filed Oct 15, 1979, 11:15 am: 2 IR 1524; errata, 2 IR 1743)*

45 IAC 3.1-1-46 Methods of averaging property values

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 46. Averaging Property Values. As a general rule, the average value of property owned by the taxpayer is determined, for purposes of the property factor, by averaging the values at the beginning and end of the tax period. However, the Department may require or allow averaging by monthly values if such method is required to properly reflect the average value of the property for the tax period. This method is permitted if substantial fluctuations in the values of property exist or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

In valuing rental property, averaging is achieved automatically through use of the method of determining the net annual rental rate set forth in Regulation 6-3-2-2(c)(060) *[45 IAC 3.1-1-45]*. *(Department of State Revenue; Reg 6-3-2-2(c)(070); filed Oct 15, 1979, 11:15 am: 2 IR 1525; errata, 2 IR 1743)*

45 IAC 3.1-1-47 Payroll factor for apportionment

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 47. Payroll Factor. The payroll factor shall include the total amount paid by the taxpayer for compensation during the tax period.

The total amount paid to employees is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by the use of the cash method if the taxpayer is required to report such compensation paid under such method for unemployment compensation purposes. The taxpayer shall be consistent in the treatment of compensation paid in the manner described in Regulation 6-3-2-2(c)(030) *[45 IAC 3.1-1-42]*.

The term "compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded.

Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services provided that such amounts constitute income to the recipient under the Internal Revenue Code. In the case of employees not subject to the Internal Revenue Code, e.g., those employed in foreign countries, the determination of whether such benefits or services would constitute income to the employees shall be made as though such were subject to the Internal Revenue Code.

The payroll factor includes only compensation which is attributable to the business income subject to apportionment. The compensation of any employee whose activities are connected primarily with nonbusiness income shall be excluded from the factor.

Examples:

(1) The taxpayer uses some of its employees in the construction of a storage building which, upon completion, is used for the production of business income. The wages paid to those employees is treated as a capital expenditure by the taxpayer. The amount of such wages is included in the payroll factor.

(2) The taxpayer owns various securities from which nonbusiness income is derived. The management of the taxpayer's investment portfolio is the only duty of Mr. X, an employee. The salary paid to Mr. X is excluded from the payroll factor. *(Department of State Revenue; Reg 6-3-2-2(d)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1525; errata, 2 IR 1743)*

45 IAC 3.1-1-48 Denominator of payroll factor

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 48. Denominator of Payroll Factor. The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is exempt from taxation, for example, by Public Law 86-272, are included in the denominator of the payroll factor.

Example:

A taxpayer has employees in its state of legal domicile (State A) and is taxable in State B. In addition, the taxpayer has employees whose services are performed entirely in State C where the taxpayer is exempt from taxation by Public Law 86-272. As to these latter employees, the compensation will be assigned to State C where their services are performed (i.e., included in the denominator only of the payroll factor) even though the taxpayer is not taxable in State C. *(Department of State Revenue; Reg 6-3-2-2(d)(020); filed Oct 15, 1979, 11:15 am: 2 IR 1525; errata, 2 IR 1743)*

45 IAC 3.1-1-49 Numerator of payroll factor

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 49. Numerator of Payroll Factor. The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in this Regulation *[45 IAC 3.1-1-62]* to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report such compensation under such method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitutes compensation paid in this state except for compensation excluded under Regulation 6-3-2-2(d)(010) *[45 IAC 3.1-1-47]*. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

Compensation is paid in this state if any one of the following tests, applied consecutively, are met:

(a) The employee's service is performed entirely within the state.

(b) The employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction.

(c) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to Indiana:

(1) If the employee's base of operations is in Indiana, or

(2) If there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in Indiana; or

(3) If 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 employee's residence is in Indiana. The term "base of operation" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons, or to replenish stock or other materials, repair equipment, or perform any functions necessary to the exercise of his trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

Employees engaged in the transportation of persons and/or materials as part of the taxpayer's regular business activities, i.e., truck or bus drivers, shall have their wages assigned to this state based on miles traveled in this state. See Regulation 6-3-2-2(l)(020) *[45 IAC 3.1-1-63]*. *(Department of State Revenue; Reg 6-3-2-2(d)(030); filed Oct 15, 1979, 11:15 am: 2 IR 1526; errata, 2 IR 1743)*

45 IAC 3.1-1-50 Sales factor for apportionment; sales defined

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 50. Sales Factor–Sales Made in General Business Operations. "Sales" means all gross receipts of the taxpayer which are not subject to allocation as nonbusiness income. The following are examples of "sales" in various situations:

(1) If the taxpayer's business activity consists of manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of such goods or products (or other property which would be included as inventory of the taxpayer if on hand at the close of the tax year) held by the taxpayer primarily for sale in the ordinary course of business. Gross receipts for this purpose means gross sales price, less returns and allowances, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales. Federal and state excise taxes (including sales taxes) shall be included as part of such receipts and shall be in the sales factor only if such taxes are included in the gross receipts or gross

sales as reported on the taxpayer's Federal returns.

(2) If the taxpayer's business activity consists of providing services, such as the operation of an advertising agency, or the performance of equipment service contracts or research and development contracts, "sales" includes the gross receipts from the performance of such services including fees, commissions and similar items.

(3) If the taxpayer is working under a cost plus fixed fee contract, such as the operation of a government owned plant for a fee, gross receipts includes the entire reimbursed cost plus the fee.

(4) If the taxpayer is in the business of renting real or tangible personal property, "sales" includes the gross receipts from the rental, lease, or licensing the use of the property.

(5) If the taxpayer is in the business of selling, assigning, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.

In some cases, certain gross receipts should be disregarded in determining the sales factor to effectuate an equitable apportionment. See Regulation 6-3-2-2(l)(010) *[45 IAC 3.1-1-62]*. The sales factor should be consistent in the manner described in Regulation 6-3-2-2(c)(030) *[45 IAC 3.1-1-42]*. *(Department of State Revenue; Reg 6-3-2-2(e)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1526; errata, 2 IR 1743)*

45 IAC 3.1-1-51 Denominator of sales factor

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2; IC 6-3-4-14

Sec. 51. Denominator of Sales Factor. The denominator of the sales factor includes all gross receipts from the taxpayer's sales, except as noted in Regulation 6-3-2-2(l)(010) *[45 IAC 3.1-1-62]*. The denominator shall not include sales made between members of an affiliated group filing consolidated returns under IC 6-3-4-14. *(Department of State Revenue; Reg 6-3-2-2(e)(020); filed Oct 15, 1979, 11:15 am: 2 IR 1527; errata, 2 IR 1743)*

45 IAC 3.1-1-52 Numerator of sales factor

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2; IC 6-3-4-14

Sec. 52. Numerator of Sales Factor. The numerator of the sales factor generally includes gross receipts from sales attributable to this state, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness. The numerator shall not include sales between members of an affiliated group filing consolidated returns under IC 6-3-4-14. *(Department of State Revenue; Reg 6-3-2-2(e)(030); filed Oct 15, 1979, 11:15 am: 2 IR 1527; errata, 2 IR 1743)*

45 IAC 3.1-1-53 In-state sales of tangible personal property

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 53. When Sales of Tangible Personal Property Are in This State. Gross receipts from the sales of tangible personal property (except sales to the United States Government–See Regulation 6-3-2-2(e)(050) *[45 IAC 3.1-1-54]* are in this state: (a) if the property is delivered or shipped to a purchaser within this state regardless of the F.O.B. point or other conditions of sales; or (b) if the property is shipped from an office, store, factory, or other place of storage in this state, and the taxpayer is not taxable in the state of the purchaser. See Regulation 6-3-2-2(n)(010) *[45 IAC 3.1-1-64]*.

Examples:

(1) Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state. Example: The taxpayer, with inventory in State A sold $100,000 of its products to a purchaser having branch stores in several states including this state. The order for the purchase was placed by the purchaser's central purchasing department located in State B. $25,000 of the purchase order was shipped directly to the purchaser's branch store in this state. The branch store in this state is the "purchaser within this state" with respect to $25,000 of the taxpayer's sales.

(2) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the

property is subsequently transferred by the purchaser to another state. Example: The taxpayer makes a sale to a purchaser who maintains a central warehouse in this state at which all merchandise purchases are received. The purchaser reships the goods to its branch offices in other states for sale. All of taxpayer's products shipped to the purchaser's warehouse in this state is property "delivered or shipped to a purchaser within this state."

(3) The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state. Example: A taxpayer in Indiana sold merchandise to a purchaser in State A. The taxpayer directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in Indiana pursuant to the purchaser's instructions. The sale by the taxpayer is "in this state."

(4) When the property being shipped by a seller from the state of origin to a consignee in another state is diverted while enroute to a purchaser in this state, the sales are in this state. Example: The taxpayer, a produce grower in State A, begins shipment of perishable produce to the purchaser's place of business in State B. While enroute the produce is diverted to the purchaser's place of business in Indiana in which state the taxpayer is subject to tax. The sale by the taxpayer is attributed to Indiana.

(5) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. Such sale is termed a "Throwback" sale. Example: The taxpayer has its head office and factory in State A. It maintains a branch office and inventory in Indiana. Taxpayer's only activity in State B is the solicitation of orders by a resident salesman. All orders by the State B salesman are sent to the branch office in Indiana for approval and are filled by shipment from the inventory in Indiana. Since the taxpayer is immune under P.L.86-272 from tax in State B, all sales of merchandise to purchasers in State B are attributed to Indiana, the state from which the merchandise was shipped.

(6) If a taxpayer whose salesman operated from an office located in Indiana makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the sale will be attributed to the state from which the property is shipped if the taxpayer is taxable in that state. If the taxpayer is not taxable in the state from which the property is shipped, then the property will be deemed to have been shipped from Indiana and the sale is attributed to Indiana. Example: The taxpayer in Indiana sold merchandise to a purchaser in State A. Taxpayer is not taxable in State A. Upon direction of the taxpayer, the merchandise was shipped directly to the purchaser by the manufacturer in State B. If the taxpayer is taxable in State B, the merchandise is deemed to have been shipped from State B to the purchaser in State A. If the taxpayer is not taxable in State B, the merchandise is deemed to have been shipped from Indiana by the taxpayer to the purchaser in State A.

(7) Sales are not "in this state" if the purchaser picks up the goods at an out-of-state location and brings them back into Indiana in his own conveyance. *(Department of State Revenue; Reg 6-3-2-2(e)(040); filed Oct 15, 1979, 11:15 am: 2 IR 1527; errata, 2 IR 1743)*

45 IAC 3.1-1-54 Definition of sales to United States government

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 54. Sales to United States Government. Gross receipts from the sales of tangible personal property to the United States Government are in this state if the property is shipped from an office, store, warehouse, factory or other place of storage in this state. For the purposes of this regulation *[45 IAC 3.1-1-54]*, only sales for which the United States Government makes direct payment to the seller pursuant to the terms of the contract constitute sales to the United States Government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, do not constitute sales to the United States Government. However, sales made to a prime contractor will be considered sales to the United States Government where the prime contractor is authorized to act as agent for the United States Government, and for this reason only qualifies to purchase under Federal Supply Contracts entered into between the taxpayer and the United States Government.

Examples:

(1) A taxpayer contracts with the General Services Administration to deliver X number of trucks which were paid for by the United States Government. The United States Government is the purchaser.

(2) The taxpayer as a subcontractor to a prime contractor with the National Aeronautics and Space Administration contracts to build a component of a rocket for $1,000,000. The sale of the subcontractor to the prime contractor is not a sale to the United States Government. When the United States Government is the purchaser of property which remains in the possession of the taxpayer in this state for further processing under another contract, or for other reasons, "shipment" is deemed to be made at the time

of acceptance by the United States Government. *(Department of State Revenue; Reg 6-3-2-2(e)(050); filed Oct 15, 1979, 11:15 am: 2 IR 1528; errata, 2 IR 1743)*

45 IAC 3.1-1-55 Attribution of sales to state

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 55. When Sales Other Than Sales of Tangible Personal Property Are in This State. Gross receipts from transactions other than sales of tangible personal property shall be included in the numerator of the sales factor if the income-producing activity which gave rise to the receipts is performed wholly within this state. Except as provided below if the income producing activity is performed within and without this state such receipts are attributed to this state if the greater proportion of the income producing activity is performed here, based on costs of performance.

The term "income producing activity" means the act or acts directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profit. Such activity does not include activities performed on behalf of the taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, "income producing activity" includes but is not limited to the following: (1) The rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service. (2) The sale, rental, leasing, or licensing the use of or other use of tangible personal property. (3) The sale, licensing the use of or other use of intangible personal property.

Income producing activity is deemed performed at the situs of real, tangible and intangible personal property or the place where personal services are rendered. The situs of real and tangible personal property is at its physical location. The situs of intangible personal property is the commercial domicile of the taxpayer (i.e., the principal place from which trade or business of the taxpayer is directed or managed), unless the property has acquired a "business situs" elsewhere. "Business situs" is the place at which intangible personal property is employed as capital; or the place where the property is located if possession and control of the property is localized in connection with a trade or business so that substantial use or value attaches to the property. Example: Taxpayer, a corporation whose principal business activity is the manufacture and sale of hot water heaters, obtains notes for the sale of such water heaters in connection with its Indiana business activity. The property has a business situs in this state, therefore, interest income derived from such notes is attributable to this state.

The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

If receipts from sales other than sales of tangible personal property do not constitute a principal source of business income and such receipts are included in the denominator of the receipts factor, such receipts are in this state if: (a) the income producing activity is performed wholly within this state; or (b) the income producing activity is performed both in and outside this state and a greater proportion of the income producing activity is performed in this state than in any other state, based on costs of performance.

Examples:

(1) The taxpayer is engaged in the heavy construction business in which it uses cranes, tractors, and earth-moving vehicles. The taxpayer makes short-term rentals of the equipment when not needed on any project. The taxpayer rented some of the equipment to X for three weeks. The equipment was used by X for two weeks in this state and one week in State Y. The taxpayer's direct costs in connection with the equipment during the rental period was $500 each week. Accordingly, the greater proportion of such costs was incurred in this state. All of the rental receipts are business income and for purposes of the sales factor are included in the numerator for this state.

(2) Taxpayer, whose commercial domicile is in this state, manufactures and sells industrial chemicals. Taxpayer owns patents on certain of its products. The taxpayer licensed the production of the chemicals in foreign countries in return for which the taxpayer receives royalties which constitute a relatively minor amount of its income. The royalties are business income and for purposes of the sales factor are included in the numerator for the state of the taxpayer's commercial domicile.

Except as provided by special apportionment formulas, receipts from sales other than sales of tangible personal property which constitute a principal source of business income shall be attributed to this state in accordance with the following:

(a) Gross receipts from the sale, lease, rental or other use of real property are in this state if the real property is located in this state.

(b) Gross receipts from the rental, lease, licensing the use of or other use of tangible personal property shall be assigned to this state if the property is within this state during the entire period of rental, lease, license or other use. If the property is within and without this state during such period, gross receipts attributable to this state shall be based upon the ratio which

the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during such period.

(c) Income from transportation between a point in Indiana and a point outside Indiana shall be attributed to this state on a mileage basis. See Regulation 6-3-2-2(l)(020) *[45 IAC 3.1-1-63]*.

(d) Gross receipts for the performance of personal services are attributable to this state to the extent such services are performed in this state. If the services are performed partly within and without this state, such receipts shall be attributed to this state based upon the ratio which the time spent in performing such services in this state bears to the total time spent in performing such services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation which gives rise to such gross receipts. Personal service not directly connected with the performance of the contract or other obligation, as for example, time expended in negotiating the contract, is excluded from the computations.

Examples:

(1) The taxpayer, a road show, gave theatrical performances at various locations in State X and in this state during the tax period. All gross receipts from performances given in this state are attributed to this state.

(2) The taxpayer, a public opinion survey corporation, conducted a poll by its employees in State C and in this state for the sum of $9,000. The project required 600 man hours to obtain the basic data and prepare the survey report. Two hundred of the 600 man hours were expended in this state. The receipts attributable to this state are:

$$\$3{,}000 \quad \frac{(200 \text{ man hours})}{600 \text{ man hours}} \times \$9{,}000)$$

(e) Gross receipts from intangible personal property shall, if classified as business income, be attributed to this state based upon the ratio which the total property and payroll factors in this state bears to the total of the property and payroll factors everywhere for the tax period as determined in Regulations 6-3-2-2(c)(010) *[45 IAC 3.1-1-40]* et seq. and 6-3-2-2(d)(010) *[45 IAC 3.1-1-47]* et seq.

(f) The provisions of this Regulation *[45 IAC 3.1-1-55]* shall also apply to sales other than sales of tangible personal property to the United States Government.

(Department of State Revenue; Reg 6-3-2-2(e)(060); filed Oct 15, 1979, 11:15 am: 2 IR 1528; errata, 2 IR 1743)

45 IAC 3.1-1-56 Allocation of nonbusiness income

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 56. Allocation of Nonbusiness Income. Rents, royalties, capital gains, interest and dividends when considered nonbusiness income are allocated to specific jurisdictions as outlined in Regulations 6-3-2-2(h) through 6-3-2-2(k) *[45 IAC 3.1-1-57–45 IAC 3.1-1-61]*. Such income and the deductions connected therewith are not taken into consideration in computing the taxpayer's apportionment formula. When the taxpayer has deductions applicable to both business and nonbusiness income, such deductions must be prorated to determine what part is subject to allocation. *(Department of State Revenue; Reg 6-3-2-2(g)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1530; errata, 2 IR 1743)*

45 IAC 3.1-1-57 Rents and royalties from real property and tangible personal property as nonbusiness income

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 57. Rents and Royalties from Real and Tangible Personal Property. Rental income from real and tangible property is nonbusiness income if the property with respect to which the rental income was received is not or could not be used in the taxpayer's trade or business or is not incidental thereto.

Examples:

(1) The taxpayer operates a multistate car rental business. The income from car rentals is business income since such activity is the taxpayer's principal business.

(2) The taxpayer is engaged in the heavy construction business in which it uses equipment such as cranes, tractors, and

earthmoving vehicles. The taxpayer makes short-term leases of the equipment when particular pieces of equipment are not needed on any particular project. The rental income is business income.

(3) The taxpayer operates a multistate chain of men's clothing stores. The taxpayer purchases a five-story office building for use in connection with its trade or business. It used the street floor as one of its retail stores and the second and third floors for its general corporate headquarters. The remaining two floors are incidental to the operation of the taxpayer's trade or business. The rental income is business income.

(4) The taxpayer, who operates a multistate chain of grocery stores, purchases as an investment an office building in another state with surplus funds and leases the entire building to others. The net rental income is nonbusiness income.

(5) The taxpayer constructed a plant in 1930 as a part of its multistate manufacturing business. On June 30, of the tax year, the plant was closed and put up for sale. The plant was rented from July 1 of that year, until sold in November of the following year. Rental income is business income.

Net rents and royalties from real property, to the extent they constitute nonbusiness income, are allocated to the state where the property is located. Nonbusiness income from tangible personal property is allocated to Indiana to the extent the property is utilized in the state, or to Indiana in its 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. *(Department of State Revenue; Reg 6-3-2-2(h)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1530; errata, 2 IR 1743)*

45 IAC 3.1-1-58 Allocation of capital gains and losses

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 58. Capital Gains and Losses. Capital gains and losses from the sale of real property formerly used to produce nonbusiness income are allocated to the state where the property is located. Capital gains and losses from the sale of nonbusiness tangible personal property are allocated to Indiana if the property had a situs in the state when sold, or if the taxpayer's commercial domicile is in Indiana and it is not taxable in the state in which the property had a situs. Capital gains and losses from sales of nonbusiness intangible property are allocated to Indiana if the taxpayer's commercial domicile is in this state. *(Department of State Revenue; Reg 6-3-2-2(i)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1530; errata, 2 IR 1743)*

45 IAC 3.1-1-59 Interest as nonbusiness income

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 59. Interest. Interest income is nonbusiness income if the intangible with respect to which the interest was received did not arise out of or was not created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible was not related to or incidental to such trade or business operations. The term “interest” as used in this regulation *[45 IAC 3.1-1-59]* includes service charges, time-price differentials, and all other charges for the use of money.

Examples:

(1) The taxpayer operates a multistate chain of department stores, selling for cash and on credit. Service charges, interest, or time-price differentials and the like are received with respect to installment sales and revolving charge accounts. These amounts are business income.

(2) The taxpayer conducts a multistate manufacturing business. During the year the taxpayer receives a Federal income tax refund and collects a judgment against a debtor of the business. Both the tax refund and the judgment bore interest. The interest income is business income.

(3) The taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business, the taxpayer maintains special accounts to cover such items as Workmen's Compensation claims, rain and storm damage, machinery replacement, etc. The monies in those accounts are invested as interest. Similarly, the taxpayer temporarily invests funds intended for payment of Federal, State and local tax obligations. The interest income is business income.

(4) The taxpayer is engaged in a multistate money order and traveler's checks business. In addition to the fees received in connection with the sale of the money orders and traveler's checks, the taxpayer earns interest income by the investment of the funds pending their redemption. The interest income is business income.

(5) The taxpayer is engaged in a multistate manufacturing and selling business. The taxpayer usually has working capital and

extra cash totaling $200,000 which it regularly invests in short-term interest bearing securities. The interest income is business income.

(6) In January the taxpayer sold all stock of a subsidiary for $20,000,000. The funds are placed in a separate interest-bearing account pending a decision by management as to how the funds are to be utilized. The interest income is business income.

(7) The taxpayer, a multistate manufacturer, purchases and maintains a portfolio of interest-bearing securities for investment purposes. The interest from such securities is nonbusiness income.

Nonbusiness interest is allocated to Indiana if the taxpayer's commercial domicile is in this state. *(Department of State Revenue; Reg 6-3-2-2(j)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1530; errata, 2 IR 1743)*

45 IAC 3.1-1-60 Dividends as business income

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 60. Dividends. Dividends are nonbusiness income if the stock with respect to which the dividends are received did not arise out of or was not acquired in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the stock is not related to or incidental to such trade or business operation.

Examples:

(1) The taxpayer operates a multistate chain of stock brokerage houses. During the year the taxpayer receives dividends on stock it owns. The dividends are business income.

(2) The taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business the taxpayer maintains special accounts to cover such items as Workmen's Compensation claims, etc. A portion of the monies in those accounts is invested in interest-bearing bonds. The remainder is invested in various common stocks listed on national stock exchanges. Both the interest income and any dividends are business income.

(3) The taxpayer and several unrelated corporations own all of the stock of a corporation whose business operations consist solely of acquiring and processing materials for delivery to the corporate owners. The taxpayer acquired the stock in order to obtain a source of supply and materials used in its manufacturing business. The dividends are business income.

(4) The taxpayer is engaged in a multistate heavy construction business. Much of its construction work is performed for agencies of the Federal government and various state governments. Under state and Federal laws applicable to contracts for these agencies, a contractor must have adequate bonding capacity, as measured by the ratio of its current assets (cash and marketable securities) to current liabilities. In order to maintain an adequate bonding capacity the taxpayer holds various stocks and interest-bearing securities. Both the interest income and any dividends received are business income.

(5) The taxpayer receives dividends from the stock of its subsidiary or affiliate which acts as the marketing agency for products manufactured by the taxpayer. The dividends are business income.

(6) The taxpayer is engaged in a multistate glass manufacturing business. It also holds a portfolio of stock for investment purposes, the acquisition and holding of which are unrelated to the manufacturing business. The dividends received are nonbusiness income.

Nonbusiness dividends are allocated to Indiana if the taxpayer's commercial domicile is in this state. *(Department of State Revenue; Reg 6-3-2-2(j)(020); filed Oct 15, 1979, 11:15 am: 2 IR 1531; errata, 2 IR 1743)*

45 IAC 3.1-1-61 Patent and copyright royalties as nonbusiness income

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 61. Patent and Copyright Royalties. Patent and copyright royalties are nonbusiness income if the patent or copyright with respect to which the royalties were received did not arise out of or was not created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the patent or copyright is not related to or incidental to such trade or business operations.

Examples:

(1) The taxpayer is engaged in the multistate business of manufacturing and selling industrial chemicals. In connection with that business the taxpayer obtained patents on certain of its products. The taxpayer licensed the production of chemicals in foreign countries, in return for which the taxpayer receives royalties. The royalties received by the taxpayer are business income.

(2) The taxpayer is engaged in the music publishing business and holds copyrights on numerous songs. The taxpayer acquired the assets of a smaller publishing company, including music copyrights. Their acquired copyrights are therefore used by the taxpayer in its business. Any royalties received on these copyrights are business income.

(3) Same as last example, except that the acquired company also held the patent on a type of phonograph needle. The taxpayer does not manufacture or sell phonographs or phonograph equipment. Any royalties received on the patent would be nonbusiness income.

Nonbusiness patent and copyright royalties are allocated to Indiana to the extent used in the state, or, if the taxpayer's commercial domicile is in Indiana, to the extent used in states in which the taxpayer is not taxable. *(Department of State Revenue; Reg 6-3-2-2(k)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1531; errata, 2 IR 1743)*

45 IAC 3.1-1-62 Special cases of allocation and apportionment

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 62. Special Formulas for Division of Income. All corporations doing business in more than one state shall use the allocation and apportionment provisions described in Regulations 6-3-2-2(b)-(k) *[45 IAC 3.1-1-37–45 IAC 3.1-1-61]* unless such provisions do not result in a division of income which fairly represents the taxpayer's income from Indiana sources. In such case the taxpayer must request in writing or the Department may require the use of a more equitable formula for determining Indiana income. However, the Department will depart from use of the standard formula only if the use of such formula works a hardship or injustice upon the taxpayer, results in an arbitrary division of income, or in other respects does not fairly attribute income to this state or other states. It is anticipated that these situations will arise only in limited and unusual circumstances (which ordinarily will be unique and nonrecurring) when the standard apportionment provisions produce incongruous results. *(Department of State Revenue; Reg 6-3-2-2(l)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1532; errata, 2 IR 1743)*

45 IAC 3.1-1-63 Apportionment in absence of one or more factors

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 63. Property, Payroll and Sales Factors–Special Circumstances. In the case of a taxpayer that lacks one or more of the factors in the 3-factor formula, the taxpayer's business income will generally be apportioned by use of the remaining factor or factors.

Examples:

(1) The taxpayer, a wholly-owned subsidiary of a manufacturing corporation, has no employees of its own in Indiana or any other state. The taxpayer will apportion its business income by a formula the numerator of which is the property and sales factors, and the denominator of which is two.

(2) The taxpayer, a sales subsidiary for a multistate manufacturer, has no property or payroll of its own in Indiana, but does in other states. The taxpayer's business income will be apportioned by a formula the numerator of which is the sales factor and the denominator of which is three.

Where in the computation of the property, payroll or sales factors, the taxpayer has not assigned part of its property, payroll, or sales to any state, the Department may require the exclusion of the unassigned property, payroll or sales from the denominator of the appropriate factor in order to prevent distortion of the apportionment.

Transportation Companies. IC 6-3-2-2(b) requires that interstate carriers and all other multistate taxpayers use the three-factor formula in apportioning their business income. This method will assure consistency in the application of the Adjusted Gross Income Tax Act to multistate carriers. Business income for transportation companies is apportioned to Indiana by the use of the following formula:

$$\frac{\text{tangible property} + \text{payroll} + \text{revenue transportation}}{3}$$

Definition of Factors

(A) Tangible Property. Fixed properties such as buildings and land used in business, shop and terminal equipment and trucks or cars used locally or any other tangible property connected with the transportation business, will be assigned to the state in which

such properties are located.

The value of all movable equipment used in interstate transportation will be assigned to this State on the basis of total miles traveled in this State, as compared to total miles traveled everywhere. Fixed and movable property will then be combined to arrive at the total property factor, Indiana property over property everywhere.

Property owned by the transportation company is valued at original cost. Property rented is valued at eight (8) times the annual rental rate less any annual subrental.

(B) Payroll. Wages and salaries of employees assigned to fixed locations within this State shall be included in the payroll factor of this State. Wages of personnel operating interstate transportation equipment will be assigned to this State on the basis of total miles traveled in Indiana, as compared to total miles traveled everywhere. The payroll of permanent and transient personnel will then be combined to arrive at the total payroll factor, Indiana payroll over payroll everywhere.

(C) Revenue from Transportation. The total revenue dollars from transportation (both intra-state and inter-state) are to be assigned to the states traversed on the basis of class or category mileage in each state in which or through which the freight or passengers move. Pipelines may substitute revenue miles with barrel miles, cubic foot miles, or other appropriate measures of product movement. In order to determine the percentage of revenue from transportation services in Indiana, the fraction of revenue miles in Indiana over revenue miles everywhere must be applied to total revenue from transportation.

Example:

Computation of Three-Factor Apportionment Formula

A. Tangible Property Factor	
Fixed property in Indiana	40,000
Fixed property everywhere	1,000,000
Milage *[sic.]* Factor 2%	(see C below)
Movable property everywhere	24,000,000

1. Indiana value of movable property
   2% × 24,000,000 = 480,000
2. Fixed and movable property is combined to arrive at the total property factor

$$\frac{40{,}000 + 480{,}000}{1{,}000{,}000 + 24{,}000{,}000} = 2.08\%\ \text{property factor}$$

B. Payroll Factor	
Payroll at fixed Indiana location	20,000
Payroll at fixed location everywhere	1,000,000
Mileage Factor 2%	(see C below)
Payroll of employees operating interstate transportation everywhere	2,000,000

1. Indiana value of transient payroll
   2% × 2,000,000 = 40,000
2. Fixed and transient payroll is combined to arrive at the total payroll factor

$$\frac{20{,}000 + 40{,}000}{1{,}000{,}000 + 2{,}000{,}000} = 2\ \text{property factor}$$

C. Revenue From Transportation Factor	
Road miles over Indiana	90,000
Road miles everywhere	4,500,000
Total gross receipts from transportation . . .	6,000,000

1. Mileage Factor
   90,000 ÷ 4,500,000 = 2%

Mileage factor is combined with total gross receipts to arrive at the revenue from transportation factor

2% × 6,000,000 = 120,000

120,000 ÷ 6,000,000 = 2% revenue

from transportation factor

D. Total Apportionment

Percentage Property	2.08
Payroll	2.00
Revenue	2.00

6.08 ÷ 3 = 2.03% apportionment percentage

(Department of State Revenue; Reg 6-3-2-2(l)(020); filed Oct 15, 1979, 11:15 am: 2 IR 1532; errata, 2 IR 1743)

45 IAC 3.1-1-64 Definition of taxable in another state

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-25; IC 6-3-2-2

Sec. 64. "Taxable in Another State" Defined. A corporation is "taxable in another state" under the Act when such state has jurisdiction to subject it to a net income tax. This test applies if the taxpayer's business activities are sufficient to give the state jurisdiction to impose a net income tax under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provision of Public Law 86-272, 15 U.S.C.A. §381-385. In the case of any "State," as defined in IC 6-3-1-25, other than a state of the United States or political subdivision of such state, the determination of whether such "state" has jurisdiction to subject the taxpayer to a net income tax shall be made by application of the jurisdictional standards applicable to that state of the United States. If jurisdiction to tax is otherwise present, such "state" is not considered as being without jurisdiction to tax by reason of the provisions of a treaty between that state and the United States.

Example:

Corporation X is actively engaged in manufacturing farm equipment in State A and foreign country B. Both State A and foreign country B impose a net income tax but foreign country B exempts corporations engaged in manufacturing farm equipment. Corporation X is subject to the jurisdiction of State A and foreign country B.

Taxpayers are not subject to throwback on sales into states in which they are taxable under this regulation *[45 IAC 3.1-1-64]*. See Regulation 6-3-2-2(e)(040) *[45 IAC 3.1-1-53]*. *(Department of State Revenue; Reg 6-3-2-2(n)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1533; errata, 2 IR 1743)*

45 IAC 3.1-1-65 Exempt organizations and income; report

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2.8

Sec. 65. Exempt Organizations. Organizations exempt from Federal income tax under IRC §501 (a) are exempt from adjusted gross income tax. However, this exemption extends only to income of such organizations which is not taxable for Federal tax purposes. Thus organizations subject to tax under IRC §511 on their unrelated business income are also subject to adjusted gross income tax on such income.

Exempt organizations are required to file an annual report by the fifteenth day of the fifth month following the close of the tax year. Those organizations having unrelated business income must report such income by filing an annual income tax return no later than the time the annual report is due. The organization must make quarterly payments of adjusted gross income tax and file quarterly income tax returns if its adjusted gross income tax liability exceeds its gross income tax liability by $1000. See Regulation 6-3-4-4 (020) *[45 IAC 3.1-1-92]*.

For the supplemental net income tax liability of exempt organizations having unrelated business income, see Regulation 6-3-2-3.1 (010) *[45 IAC 3.1-1-68]*. *(Department of State Revenue; Reg 6-3-2-3(a)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1533; errata, 2 IR 1743)*

45 IAC 3.1-1-66 Subchapter S corporations and shareholders

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2.8; IC 6-3-4-13

Sec. 66. Subchapter S Corporations. Corporations electing Subchapter S status under Internal Revenue Code §1372 and which comply with the withholding requirements of IC 6-3-4-13 are exempt from adjusted gross and supplemental net income tax on all

income except capital gains subject to tax under Internal Revenue Code §1378. This exemption is effective until the corporation's shareholders terminate the election with the Internal Revenue Service or until the corporation engages in transactions which disqualify it from Subchapter S status. A complete or partial corporate liquidation or the intent to dissolve will not in itself terminate the election.

Subchapter S corporation shareholders are taxed on their distributive shares of income at the individual income tax rate. The character of the income (as capital gains or ordinary income) also passes through to the shareholders.

Although Subchapter S corporations are generally not subject to adjusted gross income tax, they are subject to use tax and intangibles tax, and must report and pay such tax at the time the annual return is filed. Subchapter S corporations must also withhold adjusted gross income tax on any nonresident shareholder's share of corporate income. See Regulation 6-3-4-13(010) *[45 IAC 3.1-1-109]* et seq.

For filing requirements of Subchapter S corporations, see Regulation 6-3-2-3(b)(020) *[45 IAC 3.1-1-67]*. *(Department of State Revenue; Reg 6-3-2-3(b)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1534; errata, 2 IR 1743)*

45 IAC 3.1-1-67 Subchapter S corporation reports; taxation of shareholders

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2.8

Sec. 67. Subchapter S Corporations Filing Requirements. Qualified Subchapter S corporations will file an annual return, Form It-20S on or before the fifteenth day of the fourth month following the close of the corporation's tax year. The first annual return of the corporation must be accompanied by copies of Federal Form 2553, Election by Small Business Corporation, and by Federal Form 1120S covering the corporation's first-year business activities. Corporations must designate their Federal business activity code numbers in the appropriate place on the return, as well as designating their Federal identification numbers. Annual returns must be filed by any Subchapter S corporation incorporated in Indiana or having income from Indiana sources.

Indiana resident shareholders of a Subchapter S corporation that conducts business in more than one state are subject to the adjusted gross income tax on their entire share of the corporation's income. They may, however, be allowed a credit for any taxes paid to another state on this income. Such credit will be pursuant to the provisions of Regulation 6-3-3-3(a)(010) *[45 IAC 3.1-1-74]*.

Nonresident shareholders of a Subchapter S corporation conducting business both within and without Indiana must divide their income by using the corporate division of income provisions contained in Regulation 6-3-2-2(b)(010) *[45 IAC 3.1-1-37]* et seq. In particular, these shareholders must apportion their business income on the three-factor formula outlined in Regulation 6-3-2-2(b)(030) *[45 IAC 3.1-1-39]*.

Any Subchapter S corporation which is a member of a partnership, joint venture, or pool will cause such partnership, joint venture, or pool to become subject to gross and adjusted gross income tax. See Regulation 6-3-7-1(b)(010) *[45 IAC 3.1-1-151]*. In that case, the partnership, joint venture, or pool will file annual return IT-65T and pay the tax shown to be due thereon. Profits from such entities are deductible by the corporation on its annual return.

Subchapter S corporations are required to make information returns as described in Regulation 6-3-4-9(010) *[45 IAC 3.1-1-104]*. *(Department of State Revenue; Reg 6-3-2-3(b)(020); filed Oct 15, 1979, 11:15 am: 2 IR 1534; errata, 2 IR 1743)*

45 IAC 3.1-1-68 Unrelated business income of exempt organizations

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-3.1

Sec. 68. Unrelated Business Income of Exempt Organizations. Under IC 6-3-2-3.1, exempt organizations are subject to adjusted gross income tax and supplemental net income tax on income derived from an unrelated trade or business as defined in Internal Revenue Code §513. This section does not apply to the United States and its agencies and instrumentalities, nor to the State of Indiana, a state agency as defined in IC 34-4-16.5-2 *[IC 34-4 was repealed by P.L.1-1998, SECTION 221, effective July 1, 1998.]*, nor a political subdivision of the state as defined in IC 34-4-16.5-2 *[IC 34-4 was repealed by P.L.1-1998, SECTION 221, effective July 1, 1998.]*, all of which are exempt from adjusted gross income tax on all income. This section does apply to all other exempt organizations such as churches, fraternal organizations and professional societies.

An “unrelated trade or business” is one the conduct of which is not substantially related (aside from the needs of income or the use of the profits) to the performance by the exempt organization of the function constituting the basis for which it was granted exemption. However, under Internal Revenue Code § 513 the term does not include income from a trade or business:

(1) in which substantially all the work is done for the organization without compensation; or

(2) which is carried on primarily for the convenience of its members, employees, etc.; or

(3) which is the selling of merchandise substantially all of which has been received by the organization as gifts or contributions.

The exempt organization will compute its taxable unrelated business income in the same manner as any other taxpayer having business income. However, its business deductions are limited to those directly connected with the carrying on of the unrelated trade or business. Taxpayers should consult the Internal Revenue Code §§511-515 and the regulations established thereunder for a more detailed explanation of the Federal income tax on unrelated business income. *(Department of State Revenue; Reg 6-3-2-3.1(010); filed Oct 15, 1979, 11:15 am: 2 IR 1534; errata, 2 IR 1743)*

45 IAC 3.1-1-69 Federal civil service annuity income

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-3.7

Sec. 69. Federal Civil Service Annuity Income. See Regulation 6-3-1-3.5(a)(050)(12) *[Subsection (12) of 45 IAC 3.1-1-5]*. *(Department of State Revenue; Reg 6-3-2-3.7(010); filed Oct 15, 1979, 11:15 am: 2 IR 1535; errata, 2 IR 1743)*

45 IAC 3.1-1-70 Military pay

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-4

Sec. 70. Military Pay. See Regulation 6-3-1-3.5(a)(050)(10) *[Subsection (10) of 45 IAC 3.1-1-5]*. *(Department of State Revenue; Reg 6-3-2-4(010); filed Oct 15, 1979, 11:15 am: 2 IR 1535; errata, 2 IR 1743)*

45 IAC 3.1-1-71 Credits and adjustments for taxes withheld

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3-3-1

Sec. 71. Individual Withholding Credits. To claim credit for taxes withheld under this Act, an individual taxpayer must attach a copy of the wage and tax statement, Form W-2, to the Indiana Individual Income Tax return. No credit may be claimed for tax withheld to any other state or political subdivision of any other state with the exception of local taxes paid against County Adjusted Gross Income Tax. Amounts withheld for local income taxes under provisions of IC 6-3-1-3.5(a)(5) may be deducted as an adjustment (but not as a credit) to the extent allowed. *(Department of State Revenue; Reg 6-3-3-1(010); filed Oct 15, 1979, 11:15 am: 2 IR 1535; errata, 2 IR 1743)*

45 IAC 3.1-1-72 Credit for other taxes paid by corporation

Authority: IC 6-8.1-3-3
Affected: IC 6-3-3-2; IC 6-3-8

Sec. 72. Corporation Credit Payments. Corporate taxpayers, including partnerships with corporate partners, are subject to both the gross and adjusted gross income taxes. See Regulation 6-3-7-1(b). However, IC 6-3-3-2 provides for a credit against the corporation's Adjusted Gross Income Tax liability for any Gross Income Tax imposed. Thus, the taxpayer will be subject to the greater of the two taxes plus the supplemental net income tax imposed under IC 6-3-8-1 through 6-3-8-6 and will apply payments made under either tax against the ultimate amount due. *(Department of State Revenue; Reg 6-3-3-2(010); filed Oct 15, 1979, 11:15 am: 2 IR 1535; errata, 2 IR 1743)*

45 IAC 3.1-1-73 Completed contract accounting; credit for taxes paid

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-5-12; IC 6-2.1-8-2; IC 6-3-3-2

Sec. 73. Completed Contract Accounting-Carryover of Gross Income Tax Credits. A corporation using the completed contract

method of accounting for Federal income tax and Indiana Adjusted Gross Income Tax purposes is required under IC 6-2-1-23(b) *[Repealed by P.L.77-1981, SECTION 22. Recodified as IC 6-2.1-5-12.]* to report its gross receipts from the contract on the cash basis. For the year the contract is reported for Adjusted Gross Income Tax purposes, gross income taxes paid on the contract in the preceding three years may be claimed as a credit reduced by the amounts used to offset Adjusted Gross Income Tax in the preceding years. Also, this credit is limited to the amount of Adjusted Gross Income Tax incurred on the contract. *(Department of State Revenue; Reg 6-3-3-2(020); filed Oct 15, 1979, 11:15 am: 2 IR 1535; errata, 2 IR 1743)*

45 IAC 3.1-1-74 Credit for other state income taxes

Authority: IC 6-8.1-3-3
Affected: IC 6-3-3-3

Sec. 74. Credit for Taxes Paid To Other States. An Indiana resident must report income from all sources, including out-of-state income, in calculating Indiana adjusted gross income tax. If a resident is required and does pay an income tax to any other state (depending upon which state), possession or foreign country on income derived therefrom, he may, upon production of satisfactory evidence of such payment of tax, claim a credit against his Indiana Adjusted Gross Income Tax.

The credit is the lesser of:

(a) The amount of income tax actually paid to the other state on income from that state; or,

(b) An amount equal to two percent (2%) of the income from the other state which is taxed by Indiana; or

(c) The amount of state tax due to Indiana.

Credit is not allowed for city income or occupational taxes paid in other states or state income taxes paid in states allowing Indiana residents a nonresident credit.

Satisfactory evidence is as follows:

The credit taken must be supported by a separate calculation of the credit along with a copy of the tax return filed with the other state, certified as true, and/or having been received by the proper taxing authority of such state. Withholding statements or other evidence of tax payments without a certified copy of an annual tax return will not be acceptable.

Income from another state is that part of Federal gross income, minus all attributable Internal Revenue Code section 62 deductions, derived from sources without Indiana that is taxable in a particular state or country and is also taxable under this Act.

EXAMPLE:

Assuming the following facts:	
Income from Indiana	$ 6,000.00
Income from other state	4,000.00
Total Indiana exemptions	3,000.00
Tax liability to other state	100.00
Calculate Indiana tax and credits as follows:	
Total income	$10,000.00
Less: Exemptions	3,000.00
Taxable Income	7,000.00
Indiana tax rate	.02
Indiana tax	140.00
Credit for tax paid to other state:	
Income from other state	$ 4,000.00
Indiana rate	.02
*Tax Credit	$ 80.00
Balance of tax due Indiana	$ 60.00

*[This amount cannot be larger than tax actually paid to other state.] *(Department of State Revenue; Reg 6-3-3-3(a)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1535; errata, 2 IR 1743)*

45 IAC 3.1-1-75 Nonresident credit from other states

Authority: IC 6-8.1-3-3
Affected: IC 6-3-3-3

Sec. 75. Credit Agreement States. Credit for taxes paid other states will not be allowed for taxes paid to states which allow Indiana residents a nonresident credit.

Credit should instead be obtained from the state imposing the tax upon Indiana residents. These states include:

Arizona	Maryland	West Virginia
California	New Mexico	Washington D.C.

All income received from these states is reported in the same manner as if it were received from Indiana. No credit may be taken on the Indiana tax return for any taxes withheld or otherwise paid to the other state. Instead, after filing the Indiana tax return, the taxpayer should file a nonresident tax return with the other state, taking credit for the Indiana tax. This nonresident return must be filed in accordance with the instructions received from the other state.

EXAMPLE: Taxpayer is Full-Year Indiana Resident

Income from Indiana	$6,000.00
Income from Arizona	4,000.00
Total Income Exemptions	3,000.00
Total liability to Arizona	120.00
Calculate Indiana tax and credits as follows:	
Total income	$10,000.00
Less: Exemptions	3,000.00
Taxable Income	7,000.00
Indiana tax rate	.02
Indiana tax	140.00
Credit for tax paid to Arizona . . .	NONE

Take credit on nonresident return filed with Arizona for tax paid to Indiana based on Arizona income. *(Department of State Revenue; Reg 6-3-3-3(a)(020); filed Oct 15, 1979, 11:15 am: 2 IR 1536; errata, 2 IR 1743)*

45 IAC 3.1-1-76 Reciprocity

Authority: IC 6-8.1-3-3
Affected: IC 6-3-3-3; IC 6-3-5-1

Sec. 76. Reciprocal Agreements States. Residents who have income consisting of salaries, wages, and commissions from states with which Indiana has a reciprocal tax agreement must report all such income as if it were from Indiana. These states include:

Illinois	Michigan	Pennsylvania
Kentucky	Ohio	Wisconsin

Credit cannot be taken for any taxes withheld by or paid to any of these states in connection with salaries, wages, or commissions received from such states. If tax has been withheld by any of these states, a claim for refund should be filed with the state which withheld the taxes.

EXAMPLE: Taxpayer is Full-Year Indiana Resident

Income from Indiana	$6,000.00
Income from Illinois (wages)	4,000.00
Total Income Exemptions	3,000.00
Total liability to Illinois	-0-
Calculate Indiana tax and credits as follows:	

Total income	$10,000.00
Less: Exemptions	3,000.00
Taxable Income	7,000.00
Indiana tax rate	.02
Indiana tax	140.00
Credit for tax paid to Illinois:	NONE

No credit is allowed taxpayer since Indiana and Illinois have a reciprocal agreement. Taxpayer must file with Illinois to recover any withholding to Illinois.

For income other than salaries, wages and commissions, a credit will be allowed under the procedures for claiming credit for taxes paid to other states as outlined in Regulation 6-3-3-3(a)(010) *[45 IAC 3.1-1-74]*.

Likewise, a resident of another reciprocal agreement state who works in Indiana and has Indiana withholding tax deducted from his wages, salaries or commissions may claim a refund of the amount so withheld. To claim a refund, an individual must file an Indiana Nonresident tax return indicating residency in a reciprocal state and attaching a wage and tax statement (Form W-2) showing that Indiana taxes were withheld. *(Department of State Revenue; Reg 6-3-3-3(a)(030); filed Oct 15, 1979, 11:15 am: 2 IR 1536; errata, 2 IR 1743)*

45 IAC 3.1-1-77 Nonresident reverse credit reciprocity

Authority: IC 6-8.1-3-3
Affected: IC 6-3-3-3; IC 6-3-5-1

Sec. 77. Reverse Credit for Nonresidents. A credit is allowed against adjusted gross income tax imposed upon nonresidents who reside in states which grant similar credits to Indiana residents who become subject to tax under the laws of those states.

The Indiana credit (reverse credit) is the amount of income tax actually paid to the taxpayer's resident state but only on income derived from Indiana sources, or two percent (2%) of such income, whichever is less. The list of those states which grant a similar credit and the method for computing the allowable amount of credit are outlined under Regulation 6-3-3-3(a)(020) *[45 IAC 3.1-1-75]*.

In order to claim this credit, the taxpayer must file an Indiana Part-Year or Nonresident Tax Return along with a certified copy of the return filed with his resident state, reporting income which is subject to tax under this Act and under the laws of taxation of the other state. *(Department of State Revenue; Reg 6-3-3-3(b)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1536; errata, 2 IR 1743)*

45 IAC 3.1-1-78 Credit for the elderly

Authority: IC 6-8.1-3-3
Affected: IC 6-3-3-9

Sec. 78. Credit for the Elderly. A resident individual, and his spouse in the case of a joint return, is allowed a credit for the elderly on his Indiana return provided he qualifies for the credit under Section 37 of the Internal Revenue Code. The allowable credit is equal to the lesser of:

(A) Two-fifteenths (2/15) of tentative credit for the elderly on Federal schedules R and RP; or,

(B) *The remainder of:

(1) total taxes imposed for the taxable year less

(2) any allowable college credit or credit for taxes paid to other states.

*[The sum of college credit, credit for taxes paid to other states, and credit for the elderly may be equal to but cannot exceed the amount of state income tax due to Indiana.]

EXAMPLE:

Indiana Adjusted Gross Income	$10,000.00
Tax Liability before Credits	200.00
College credit	25.00
Credit for taxes paid to other states	125.00
Subtotal	$ 50.00

Tentative Federal Credit	$ 420.00
2/15 of Federal Credit	$ 56.00
Indiana Credit for the Elderly	$ 50.00
(lesser of $50.00 and $56.00)	

(Department of State Revenue; Reg 6-3-3-4.1(010); filed Oct 15, 1979, 11:15 am: 2 IR 1537; errata, 2 IR 1743) NOTE: IC 6-3-3-4.1 concerning the credit for the elderly was repealed by P.L.25-1981, SECTION 9. See, IC 6-3-3-9 concerning the unified tax credit for the elderly.

45 IAC 3.1-1-79 Credit for contributions to colleges

Authority: IC 6-8.1-3-3
Affected: IC 6-3-3-5

Sec. 79. College Credit. The Indiana Department of State Revenue will recognize credits taken on Individual, Fiduciary, and Corporation Income Tax Returns which are supported by contributions made to an "institution of higher education located in Indiana." In order to qualify for this credit, the contribution must be made directly to the institution of higher education, or to any corporation or foundation organized and operated solely for the benefit of any such institution of higher education, and/or to the Associated Colleges of Indiana.

However, any shareholder of a sub "S" corporation which makes a contribution to an accredited Indiana college, university or institution will not be eligible for college credit. This is because charitable contributions do not flow through to the shareholders for Federal tax purposes. Organizations which are not subject to the adjusted gross income tax, such as banks and savings and loan associations, may not claim the college credit.

The institution of higher education must grant an associate, bachelors, masters, or doctoral degree, or any combination thereof, and the school must be accredited to grant such degrees by one of the following agencies:

(1) North Central Association of Colleges and Secondary Schools;

(2) Indiana Department of Public Instruction; or

(3) American Association of Theological Schools.

Allowable Credit for Individuals, Trusts and Estates

An individual is entitled to a tax credit for gifts equal to fifty percent (50%) of the aggregate amount thereof, but not exceeding the lesser of:

(1) $100.00 for a single return, trust or estate;

(2) $200.00 for a joint return; or

(3) The individual's adjusted gross income tax liability for the year in which the gifts are made, less the amount of all other credits allowable against such tax under the Adjusted Gross Income Tax Act. With respect to the third limitation, the other credits presently allowed by the Act against adjusted gross income tax include the credit for taxes paid to other states and the credit for the elderly.

In no event will a tax credit for contribution to educational institutions in excess of tax owing in any year give rise to an overpayment of tax to be refunded.

A separate schedule, CC-40, will be available for reporting and claiming this credit. The schedule must be attached to the individual return, Form IT-40, the nonresident return, Form IT-40PNR, or the Fiduciary Return, Form IT-41.

Allowable Credit for Corporations

A corporation is entitled to a tax credit for gifts to institutions of higher education equal to fifty percent (50%) of their total gifts in that year, but not to exceed the lesser of (1) ten per cent (10%) of the corporation's adjusted gross income tax for the year in which the gifts are made; (2) the sum of $1000.00; or (3) the corporation's adjusted gross income tax for the year in which the gifts are made less the amount of all other credits allowable against such tax under the Adjusted Gross Income Tax Act. In no event will the sum of the credit for contributions to institutions of higher education and the credit for the Hard Core Unemployed be in excess of the tax due.

The tax credit may be applied against either the gross income tax or the adjusted gross income tax. The credit computation is based on the adjusted gross income tax. Thus, a corporation which has no taxable adjusted gross income would not be allowed this tax credit. A separate schedule, Form CC-20, is available for reporting and claiming this credit. The schedule must be attached to the corporation return, Form IT-20.

Following is a listing of the eligible schools in which the contributor may qualify for the college credit:

INSTITUTION	CITY
Ancilla College	Donaldson
Anderson College	Anderson
The Associated Colleges of Indiana	Indianapolis
Ball State University	Muncie
Bethel College	Mishawaka
Butler University	Indianapolis
Calumet College	Whiting
Catholic Seminary Foundation of Indianapolis (St. Maur's Seminary)	Indianapolis
Christian Theological Seminary	Indianapolis
Concordia Senior College	Fort Wayne
DePauw University	Greencastle
Earlham College	Richmond
Fort Wayne Bible College	Fort Wayne
Franklin College of Indiana	Franklin
Goshen Biblical Seminary	Elkhart
Goshen College	Goshen
Grace Theological Seminary and Grace College	Winona Lake
Hanover College	Hanover
Huntington College	Huntington
Indiana Central University	Indianapolis
Indiana Institute of Technology	Fort Wayne
Indiana State University	Terre Haute
Indiana University	Bloomington and Regional Facilities
Indiana Vocational Technical College	Indianapolis and Regional Facilities
Manchester College	North Manchester
Marian College	Indianapolis
Marion College	Marion
Mennonite Biblical Seminary	Elkhart
Northwood Institute of Indiana	West Baden
Oakland City College	Oakland City
Purdue University	West Lafayette and Regional Campuses
Rose-Hulman Institute of Technology	Terre Haute
St. Francis College	Fort Wayne
St. Joseph College	Rensselaer
St. Mary-of-the-Woods College	Terre Haute

St. Mary's College	Notre Dame
St. Meinrad College	St. Meinrad
Taylor University	Upland
Tri-State College	Angola
University of Evansville	Evansville
University of Notre Dame	Notre Dame (South Bend)
Valparaiso University	Valparaiso
Vincennes University	Vincennes
Wabash College	Crawfordsville

This is not necessarily a complete listing and taxpayers having any questions as to the eligibility of any particular contribution for credit should petition the Department in writing. *(Department of State Revenue; Reg 6-3-3-5(010); filed Oct 15, 1979, 11:15 am: 2 IR 1537; errata, 2 IR 1743)*

45 IAC 3.1-1-80 Definition of household income for circuit breaker credit and credit for elderly and disabled (Repealed)

Sec. 80. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 3.1-1-81 Definition of homestead (Repealed)

Sec. 81. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 3.1-1-82 Circuit breaker credit eligibility (Repealed)

Sec. 82. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 3.1-1-83 Circuit breaker credit filing requirements (Repealed)

Sec. 83. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 3.1-1-84 Circuit breaker credit computation (Repealed)

Sec. 84. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 3.1-1-85 Credit for motor fuel tax (Repealed)

Sec. 85. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 3.1-1-86 Credit for neighborhood assistance contributions

Authority: IC 6-8.1-3-3
Affected: IC 6-3.1-9

Sec. 86. Neighborhood Assistance Credit. Credit will be allowed to individuals and corporations who make contributions to individuals, groups, or neighborhood organizations in "economically disadvantaged areas" as defined by the Indiana Department of Commerce in Regulation 104-1(K) of the Neighborhood Assistance Credit Program Regulations.

Contributions may consist of cash or goods, job training, education, community services, counseling and advice, crime prevention, housing facilities, emergency assistance, medical care or recreational facilities. Regulation 105-1 of the Neighborhood Assistance Credit Program Regulations issued by the Indiana Department of Commerce stipulates that contributions other than those of cash or goods must be "conducted on a not-for-profit basis only by not-for-profit organizations." *(Department of State Revenue;*

Reg 6-3-3.1-1(010); filed Oct 15, 1979, 11:15 am: 2 IR 1542; errata, 2 IR 1743)

45 IAC 3.1-1-87 Limitation on credit for neighborhood assistance

Authority: IC 6-8.1-3-3
Affected: IC 6-3.1-9

Sec. 87. Limitation of Neighborhood Assistance Credit. The individual or corporation who makes the contribution in the approved program may take a credit of fifty percent (50%) of the amount invested for the taxable year. If the contribution is of a non-monetary nature, the allowable credit will be 50% of the fair market value at the time of the contribution. In no case, however, may the credit exceed $25,000.00.

EXAMPLE: F.U.G. Corporation made an $80,000.00 qualified contribution during the taxable year to the G.U.F. Neighborhood Organization, which is a tax exempt organization for Federal and State tax purposes. The allowable Neighborhood Assistance Credit for F.U.G. Corporation is determined as follows:

Amount contributed	$80,000.00
50% of contribution	40,000.00
Allowable credit	25,000.00*

*[The allowable credit is the lesser of $25,000.00 or 50% of the contribution.] *(Department of State Revenue; Reg 6-3-3.1-4(010); filed Oct 15, 1979, 11:15 am: 2 IR 1542; errata, 2 IR 1743)*

45 IAC 3.1-1-88 Claim for neighborhood assistance credit

Authority: IC 6-8.1-3-3
Affected: IC 6-3.1-9

Sec. 88. Procedure for Claiming Neighborhood Assistance Credit. Any business, firm, or individual that desires to claim the Neighborhood Assistance Credit must first apply to the Indiana Department of Commerce, requesting approval of the program. Such application should set forth the program to be conducted, the disadvantaged area(s) selected, the amount to be invested, and the plans for implementing the program.

After receiving approval of the program the applicant must then file Form NC-10, Neighborhood Assistance Credit Application, with the Indiana Department of Revenue. Form NC-10 is used to determine the tentative credit amount to be claimed, and must contain the Certificate of Approval from the Department of Commerce.

The Department of Revenue will then make a determination on the credit application and return to the taxpayer Form NC-20, Notice of Department Decision on Neighborhood Assistance Credit Application, which will set forth the approved credit amount, if any, to be claimed by the taxpayer. If the application is disapproved, a reason for the disapproval will be on Form NC-20.

On approved applications, Form NC-30, Statement of Payment for Neighborhood Assistance Credit, must be filed with the Department of Revenue within thirty (30) days after the taxpayer's receipt of Form NC-20. This form must be accompanied by the taxpayer's proof of payment substantiating that payment has been made on an approved program.

A final statement, Form NC-40, Tax Return Attachment to Support Neighborhood Assistance Credit Claimed, must then be attached to the Indiana Income Tax Return filed by the taxpayer, in order to provide a reference to the claimant's file. *(Department of State Revenue; Reg 6-3-3.1-5(010); filed Oct 15, 1979, 11:15 am: 2 IR 1543; errata, 2 IR 1743)*

45 IAC 3.1-1-89 Limitation on total neighborhood assistance credits granted by state

Authority: IC 6-8.1-3-3
Affected: IC 6-3.1-9

Sec. 89. Maximum Amount of Neighborhood Assistance Credit Allowable. The total amount of Neighborhood Assistance Credit in any State fiscal year (July 1-June 30) may not exceed one million dollars. When the total credits approved equal one million dollars, no applications thereafter will be approved. Due to this limitation, applications for the credit will be considered in the chronological order in which they are filed. *(Department of State Revenue; Reg 6-3-3.1-6(010); filed Oct 15, 1979, 11:15 am: 2 IR 1543; errata, 2 IR 1743)*

45 IAC 3.1-1-90 Time extensions for filing returns (Repealed)

Sec. 90. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-91 Declarations of estimated tax by individuals

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4-4

Sec. 91. Declarations of Estimated Tax By Individuals. An individual who does not have Indiana Adjusted Gross Income Tax or County Adjusted Gross Income Tax withheld from his wages on a regular basis is required to file a Declaration of Estimated Tax if he owes $100.00 or more of Indiana Adjusted Gross Income Tax or County Adjusted Gross Income Tax. Specifically, he will declare the amount of tax estimated for the current year and submit quarterly payments to prepay the tax. Also, individuals who have tax withheld by an employer are required to file a declaration if they have income other than wages in excess of $5,000.00 which is not covered by withholding. The following schedule illustrates the determination of the declared amount:

(A) Total Estimated Income in current year . . . . . $ _____
(B) Total Exemption . . . . . $ _____
(C) Amount subject to tax (line A less line B) . . . . . $ _____
(D) Amount of State Tax (line C × 2%) . . . . . $ _____
(E) Estimated State Tax Withheld by employer (if any) . . . . . $ _____
(F) Amount of State Declaration (line D less line E) (Enter this amount on Form IT-40, in the space for total State Estimated Tax) . . . . . $ _____
(G) Estimated Amount of County Tax (line C × appropriate county tax rate) . . . . . $ _____
(H) Estimated County Tax Withheld by employer (if any) . . . . . $ _____
(I) Amount of County Declaration (line G, less line H) (Enter this amount on Form IT-40 in the space provided for County Declaration of Estimated Tax) . . . . . $ _____

An individual subject to estimated tax must, when filling out his tax return for the previous year, make a Declaration of Estimated Tax for the current year; i.e., 1978 estimated tax must be declared and shown on the 1977 income tax return. The taxpayer is then required to add one fourth (1/4) of the declared estimated tax to his tax due for the preceding year. The remainder of his estimated tax due is to be made in three quarterly payments. The subsequent quarterly payments are to be made on voucher form ES-40.

If a taxpayer has estimated his tax in the previous year he will receive vouchers and envelopes with his return for quarterly payments of his estimated tax. If this is his first year to estimate, the vouchers and envelopes will be sent to him after he makes a declaration on his individual income tax return.

EXAMPLE: Mr. Smith, while completing his 1977 Indiana return in March of 1978, determines that he will owe the State $100.00 of Indiana Adjusted Gross Income Tax for 1978. He then declares $100.00 for 1978 on the appropriate line of his 1977 return and includes $25.00 [one fourth (1/4) of his 1978 estimated tax] with his payment of 1977 taxes. He pays the remaining three fourths (3/4) of his estimated tax in three (3) quarterly payments of $25.00 (June 15, September 15, and January 15).

A declaration may be made after the Individual Income Tax Return has been filed by filling out a voucher which the Department of Revenue will furnish on request, along with a remittance in the appropriate amount. To amend an estimate, a voucher should be submitted with the necessary changes and remittance reflecting same. No other form is necessary.

However, an estimated tax payment may not be made on a prior-year return. If the taxpayer is not filing a current-year return, then estimated payments must be made on a voucher. NOTE: The Department does not send quarterly notices of estimated tax due, but rather it is the responsibility of the taxpayer to send in his payments with the appropriate voucher.

PENALTIES:

A penalty may be assessed for failure to make sufficient payment of estimated tax. Penalty is computed at a rate of 8% per annum on the amount of unpaid tax.

EXCEPTIONS:

If at least two-thirds (2/3) of total gross income from all sources is attributable to farming or fishing (including oyster farming) a declaration of estimated tax need not be made if the individual's income tax return is filed any time on or before March 1 of the succeeding year (IRC §6073b).

In addition, the Department will not assess penalty for underpayment of estimated tax if the taxpayer falls within the exceptions of IRC §6654d. *(Department of State Revenue; Reg 6-3-4-4(010); filed Oct 15, 1979, 11:15 am: 2 IR 1544; errata, 2 IR 1743)*

45 IAC 3.1-1-92 Declarations of estimated tax by corporations

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4-4

Sec. 92. Declaration of Estimated Tax By Corporations. Corporations are required under Indiana law to make estimated payments of both gross and adjusted gross income tax, as well as supplemental net income tax.

Any corporation whose gross income tax liability exceeds $250.00 ($25.00 prior to January 1, 1978) per quarter is required to file a Corporation Quarterly Income Tax Return, Form IT-6, within thirty (30) days after the close of the quarter. Failure to make quarterly payments of gross income tax will result in a 10% penalty together with interest at 8% per annum.

Corporations are required to make quarterly payments of the adjusted gross income tax when the estimated annual amount of such tax exceeds the gross income tax by more than $1,000.00. Quarterly payments of supplemental net income tax are required when the estimated annual amount of such tax exceeds $1,000.00. Failure to make quarterly payments will result in an 8% penalty as explained in IC 6-3-4-4(c).

Tax booklets which include the necessary quarterly and annual tax returns will be mailed automatically once the corporation is established on the mailing list after the initial return is filed.

Use of the correct Federal Identification Number is most important in assuring credit to the proper account. If the I.D. number is changed in any way, an explanation for the change should be sent to the Department immediately.

All taxpayers are cautioned that fifth quarter or supplemental payments with extensions are to be clearly designated as such so that the payment is not applied to a subsequent taxable year. In addition, all taxpayers should note that refunds derived from filing the annual corporate income tax return cannot be applied to the next taxable year's quarterly estimated liability. If a taxpayer has overpaid quarterly payments, the credit must be claimed on the annual corporate return to obtain a refund. If a taxpayer remits one check for the entire remainder of a year's estimated liability, no further quarterly returns should be filed with the Department after the date of the payment. It is important to note that all checks remitted to the Department should be accompanied by a return or a complete explanation for the payment.

EXAMPLES OF QUARTERLY INCOME TAX PAYMENTS

EXAMPLE A

(1) Estimated Adjusted Gross Income for the quarterly period	$1,025,000	
(2) Estimated Adjusted Gross Income Tax (3%)	30,750	
(3) Gross Income Tax	30,250	
(4) Excess Line 2 minus Line 3	500	
Quarterly Tax Payments–Gross Income Tax	$30,250	
Adjusted Gross Income Tax	500	
Total		$ 30,750.00
Supplemental Net Income Tax–		
Supplemental Net Income for the quarterly period–Subtract the greater of the estimated adjusted gross income tax or gross income tax from adjusted gross income	$994,250.00	
Supplemental Net Income Tax (3%)	29,827.50	
Quarterly tax payment		$ 29,827.50
Total Quarterly Payment		$ 60,577.50

EXAMPLE B

(1) Estimated Adjusted Gross Income for the quarterly period	$1,000,000.00	
(2) Estimated Adjusted Gross Income Tax (3%)		30,000.00
(3) Gross Income Tax	31,250.00	

(4) Excess Line 2 minus Line 3	-0-	
Quarterly Tax Payment–Gross Income tax	$31,250.00	
Adjusted Gross Income Tax	-0-	
Total		$ 31,250.00
Supplemental Net Income Tax		
Supplemental Net Income for the quarterly period–Subtract the greater of the estimated adjusted gross income tax or gross income tax from adjusted gross income	$968,750.00	
Supplemental Net Income Tax (3%)	$29,062.50	
Quarterly tax payment		$ 29,062.50
Total Quarterly Payment		$ 60,312.50

PENALTIES

Eight percent (8%) penalty per annum shall be assessed by the Department on corporations failing to make payments as required of the adjusted gross income tax and the supplemental net income tax; however, no penalty shall be assessed as to any quarterly payment which equals or exceeds twenty percent (20%) of the final tax liability for such taxable year, or as to any quarterly payment which shall equal or exceed twenty-five percent (25%) of the final tax liability for the taxpayer's previous taxable year. The eight percent (8%) per annum penalty as to any underpayment of tax on a quarterly return shall only be assessed on the difference between the actual amount paid by the corporation on such quarterly return and twenty-five percent (25%) of the corporation's final adjusted gross income tax liability or supplemental net income tax liability, as the case may be for such taxable year.

NOTE:

The information contained herein with regard to the adjusted gross income tax and the supplemental net income tax is not applicable to municipal corporations and not-for-profit organizations which are exempt from Federal income taxes.

(Department of State Revenue; Reg 6-3-4-4(010); filed Oct 15, 1979, 11:15 am: 2 IR 1545; errata, 2 IR 1743)

45 IAC 3.1-1-93 Copies of federal returns; social security numbers; confidentiality (Repealed)

Sec. 93. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-94 Notice of change in federal return or liability

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4-6

Sec. 94. Notice of Modification. All taxpayers, except resident individuals, are required to file a notice with the Department within 120 days after a modification of a Federal income tax return or a modification of Federal income tax liability explaining the modification. For individual taxpayers, Form IT-40X must be used for this purpose. Taxpayers other than individuals should use the proper annual income tax return, and should mark it "amended." *(Department of State Revenue; Reg 6-3-4-6(b)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1546; errata, 2 IR 1743)*

45 IAC 3.1-1-95 Prescribed forms (Repealed)

Sec. 95. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-96 Copies of forms (Repealed)

Sec. 96. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-97 Returns and reports by withholding agents

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4

Sec. 97. Withholding Agent's Returns and Reports to the Department. Employers who make payments of wages subject to the Adjusted Gross Income Tax Act, and who are required to withhold Federal taxes pursuant to the Internal Revenue Code (USC Title 26), are required to withhold from employees' wages Adjusted Gross and County Adjusted Gross Income Tax.

Withholding agents who are required to withhold Indiana Adjusted Gross Income Tax and County Adjusted Gross Income Tax (where applicable), shall make return of and payment to the Department monthly whenever the amount of tax due, for either County and State, exceeds an aggregate of $50 per month with such payment due on the thirtieth (30th) day of the following month. Where the aggregate amount of tax due under the Adjusted Gross Income Tax or County Adjusted Gross Income Tax does not exceed $50 per month, payment and return of the amount of tax due shall be made quarterly, with such payment due on the last day of the month following the end of the quarter. The following criteria should be used:

(1) A withholding agent who falls within the monthly reporting system, due to maintaining an aggregate of fifty dollars ($50) per month, but who in any month thereafter may maintain an aggregate of less than fifty dollars ($50) per month, should remit that lesser amount on a monthly basis so as to maintain the status of being on the monthly system.

(2) A withholding agent who falls within the quarterly reporting system, due to not maintaining an aggregate of fifty dollars ($50) per month, but who in any month thereafter does maintain an aggregate of fifty dollars ($50) per month, should then, and thereafter, begin reporting and making returns on a monthly basis and thereby maintain the status of being on the monthly system.

EXAMPLES:

(1) A withholding agent withheld $45.00 state income tax and $20.00 county income tax during July, 1978. Since the aggregate withheld exceeds $50.00 per month the withholding agent falls within the monthly system and must submit the return and make payment for the month of July no later than August 30, 1978.

(2) A withholding agent withheld $30.00 state income tax and $10.00 county income tax during July, 1978. Since the aggregate does not exceed $50.00 per month the withholding agent must submit a return and make payment on a quarterly basis with such return and payment due on or before the last day of the month following the end of the quarter.

All amounts deducted and withheld by an employer shall immediately upon deduction become the money of the State. All employers who make a declaration of withholding must provide each employee annually, but not later than January 30, a statement on Form W-2 of the total amount of wages paid, and adjusted gross and county adjusted gross income tax withheld. In the case of delinquency or nonpayment of withholding tax, the employer is liable for such tax, penalties, and interest. If the employer is a corporation or partnership, all officers, employees, or members under a duty to withhold and remit adjusted gross income tax are personally liable for such taxes, penalty, and interest.

The withholding provisions of this Act apply to both resident and nonresident employers having employees resident and/or working in the state (except employees resident in states having reciprocal agreements with Indiana). *(Department of State Revenue; Reg 6-3-4-8(010); filed Oct 15, 1979, 11:15 am: 2 IR 1547; errata, 2 IR 1743)*

45 IAC 3.1-1-98 Withholding and returns by interstate transportation companies

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4

Sec. 98. Withholding of Compensation Paid To Employees of Interstate Transportation Companies. The following policy prescribed by the Department applies to the withholding of state income tax on transportation companies including railroads, motor carriers, airlines, and water carriers on compensation paid to their employees who work in more than one state.

Transportation companies who employ Indiana residents in this State will continue to withhold the Indiana Adjusted Gross Income Tax as prescribed under Section 408 of the Indiana Adjusted Gross Income Tax Act of 1963, as amended. In the event that the Indiana resident earns more than 50% of his compensation outside of Indiana the employer, under Public Law 91-569, is required to withhold the tax for the state in which more than 50% of the compensation is earned; however, if more than 50% of the compensation is not earned in any state, the employer must withhold on the basis of residency. If tax is withheld on an Indiana resident and remitted to a state other than Indiana, the employer must file an annual information return reporting any wages on those Indiana residents subject to the withholding provisions of another state.

It is the opinion of this Department that the 50% test prescribed under this Federal Act does not apply to Indiana residents employed by a railroad, motor carrier, airline or water carrier in the States of Georgia, Illinois, Kentucky, Michigan, Mississippi, North Carolina, Ohio and Wisconsin. Since Indiana has reciprocal tax agreements with the above states for transportation company employees, any tax assessed on an Indiana transportation employee other than Indiana adjusted gross income tax would be inoperative as a result of these agreements. Nonresident transportation employees who are employed in Indiana and receive more

than 50% of their compensation for services performed in this state, are subject to the withholding of the Indiana adjusted gross income tax; however, if the employees subject to Public Law 91-569 are residents of Georgia, Illinois, Kentucky, Michigan, Mississippi, North Carolina, Ohio or Wisconsin, these nonresident employees are not subject to the withholding tax provisions in accordance with the previously mentioned reciprocal agreements. Nonresident employees who are residents of those states having a reciprocal agreement with Indiana should file a certificate of residency with the employer, and the employer should withhold on the basis of residency.

Information returns are required to be submitted by the transportation company to the state of residency of those employees subject to withholding tax as a nonresident employee.

In determining whether more than 50% is earned in the state of employment, the measurement in determining compensation on the various workers is as follows:

Railroad employees assigned to track borne vehicles = Mileage traveled in a state

Maintenance and terminal employees = Time worked in a state

Motor Carrier employees operating vehicle = Mileage traveled in a state

Employees operating a water carrier = Time worked in a state

Employees operating an aircraft = Scheduled flight time

(Department of State Revenue; Reg 6-3-4-8(020); filed Oct 15, 1979, 11:15 am: 2 IR 1547; errata, 2 IR 1743)

45 IAC 3.1-1-99 Withholding for church and clergy

Authority: IC 6-8.1-3-3

Affected: IC 6-3-4

Sec. 99. Withholding Instructions for Church and Clergy. Ministers are not subject to the withholding tax but may allow their tax to be withheld on a voluntary basis. Those ministers whose Indiana adjusted gross income tax liability is $100.00 in excess of any taxes withheld must file a Declaration of Estimated Tax on Form IT-40ES by April 15.

Every withholding agent who employs any persons in the performance of personal service is subject to the same rules and regulations contained in the Internal Revenue Code. Even though a minister may or may not choose to have the tax withheld on his own salary, others employed by the church in the performance of a personal service must pay withholding tax and the church would act as the withholding agent.

Liability of Withholding Agent:

(1) Each church is liable for the tax which is required to be withheld.

(2) Each church is required to keep correct records of each person's income and tax withheld.

(3) At the end of every calendar year, each church is required to give each person a statement of his income and tax withheld.

(4) Each church is required to make quarterly returns on forms prescribed by the Department, such forms to be mailed, together with remittance of the tax to the Department of Revenue. *(Department of State Revenue; Reg 6-3-4-8(030); filed Oct 15, 1979, 11:15 am: 2 IR 1548; errata, 2 IR 1743)*

45 IAC 3.1-1-100 Withholding from certain types of employees and incomes

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-6-1; IC 6-3-4-8; IC 6-3-4-8.1; IC 6-3-4-9; IC 6-8-8-1

Sec. 100. Withholding Information For Part-Time Employees and Other Miscellaneous Withholding Requirements.

WITHHOLDING FROM INCOME OF PART-TIME OR "SUMMER" EMPLOYEES

Withholding agents are required to withhold tax, at the applicable rate stated on the rate schedules, from the income of part-time or "summer" employees just as though they were full-time or permanent employees. The fact that the employer or the employee are reasonably, or even absolutely, certain that the employee will not earn income in excess of his or her $1,000.00 exemption has no bearing on withholding the tax by the withholding agent. Similarly, the Internal Revenue Service rules which allow the employee to waive withholding, for federal tax purposes, when the income is not expected to be in excess of the Federal filing requirements and income allowances, have no bearing on withholding taxes from the income of part-time employees for Indiana tax purposes.

WITHHOLDING FROM SUPPLEMENTAL UNEMPLOYMENT COMPENSATION BENEFIT INCOME

Supplemental Unemployment Compensation Benefits paid to an individual are treated as if they were income, to the extent such benefits are includable in the gross income of such individuals, and therefore are subject to withholding by the withholding

agent for Indiana tax purposes.

WITHHOLDING FROM PENSION INCOME AND ANNUITY PAYMENTS

Withholding is not required on pension and annuity payments that meet certain qualifications of the Internal Revenue Service, unless the recipient requests that federal income tax be withheld. If such a request is made, the payor must also withhold and remit Indiana adjusted gross income tax.

Pensions and annuities that do not meet the Internal Revenue Service qualifications are considered to be deferred compensation and, therefore, require withholding in the same manner as for wages and salaries.

WITHHOLDING FROM AGRICULTURAL OR CASUAL EMPLOYEES

Withholding agents are not required to withhold Indiana state income tax from payments made to agricultural laborers or casual laborers, such as yardworkers, or domestic employees. Withholding of taxes in such cases must be agreed to by both employer and employee. If the employer does not withhold taxes he should report total annual payments made to each such employee on the Federal Form 1099, or the Indiana Form IT-12A.

WITHHOLDING FROM ATHLETES AND ENTERTAINERS

Athletes and entertainers generally perform under one of the three following types of contracts:

(1) Employees of the promoter or organizer

(2) "Independent contractors"

(3) Employees of a "production company"

The different types of contracts have different withholding requirements and thus, must be treated separately.

(1) The first situation involves athletes and entertainers performing on a salaried basis for example, basketball, hockey, and baseball players. These performers are under contract for a specific time period and they receive a predetermined salary regardless of the number or the location of performances.

Based on these facts, athletes employed by an Indiana professional sports team or an Indiana promoter incur a tax liability on their entire salary. No apportionment will be permitted for out-of-state appearances because the athlete's compensation is unaffected by such appearances.

Because these performers are considered to be employees, withholding is required on their salaries in accordance with the provisions of Regulation 6-3-4-8(010) *[45 IAC 3.1-1-97]*. Because this compensation is considered to be salary, the reciprocal agreements defined in Regulation 6-3-5-1 (010) *[45 IAC 3.1-1-115]* are applicable.

(2) The second situation involves performers who directly receive payment for Indiana performances. This situation might include performers in tennis and golf tournaments, nightclubs, and concerts. These performers are not engaged in an employer-employee relationship.

Based on these facts, "independent contractors" incur a tax liability by performing within Indiana. Independent contractors who are Indiana residents are taxable on their entire income, but may receive a credit for taxes paid to other states in accordance with Regulation 6-3-3-3(a)(010) *[45 IAC 3.1-1-74]*. Because this income is not wages or salary, reciprocity will not apply.

Withholding is not required on this income since it is not wages or salary. These individuals are, however, required to make estimated tax payments if they expect to have an Indiana income tax liability of $100 or more. (See Regulation 6-3-4-4(010) *[45 IAC 3.1-1-92]*.

There are several means of enforcing the income tax liability of an independent contractor. The Department may issue a jeopardy assessment against a taxpayer in accordance with the provisions of Regulation 6-3-6-1(g)(010). This same regulation allows the Department to accept a surety bond from the taxpayer. In addition, the Reciprocal Full Faith and Credit Act (IC 6-8-8-1 et seq.) authorizes the Department to bring suit against a taxpayer in his or her state of residence.

(3) The third situation arises when a performer organizes a "production company" to receive payment for his performances rather than receiving payment directly. The production company then pays the performer a salary.

The withholding requirements for payments made to a production company vary. If the company is incorporated, gross income tax must be withheld from any payments, as provided in IC 6-2-1-22(f) *[Repealed by P.L.77-1981, SECTION 22. Recodified as IC 6-2.1-6-1.]* If the company is a partnership or a sole proprietorship, withholding is not required; however, the partners or proprietor are required to make estimated tax payments as provided in Regulation 6-3-4-4(010) *[45 IAC 3.1-1-91]*. Enforcement of the tax liability in case of a failure to make estimated tax payments is accomplished through the means outlined above for enforcing the liability of an independent contractor.

The withholding requirements for payments made by a production company to its employees vary. If the employees are paid on a salaried basis, their situation is analogous to that of professional team athletes explained above, and withholding is required if the production company has an Indiana business situs, or if the employee is an Indiana resident. Payments made to those who are

not employees i.e., payments made on a per-performance basis, do not require withholding because this income is not wages. The recipient must make estimated tax payments, and enforcement is identical to the enforcement of the liability of independent contractors. *(Department of State Revenue; Reg 6-3-4-8(040); filed Oct 15, 1979, 11:15 am: 2 IR 1548; errata, 2 IR 1743)*

45 IAC 3.1-1-101 Annual reconciliation of employers' withholding tax

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4

Sec. 101. Annual Reconciliation of Employers Withholding Tax, Form WH-3. Each withholding agent shall send or deliver the state copy of each withholding tax statement prepared by him, to the Department not later than the last day of February, immediately following the end of the calendar year. They shall be attached to a report showing the amount of Indiana Adjusted Gross Income Tax, if any, withheld and paid to the Department for the calendar year as indicated by the monthly or quarterly returns and a reconciliation with the total amount of tax withheld during this calendar year as reflected by the withholding statement. The County Adjusted Gross Income Tax shown on Form WH-3 should be indicated in the same manner as on Form WH-1, with no breakdown by county of individual tax withheld. Only on Form W-2 will the county tax be indicated as previously described. All reports and returns shall be on a calendar year basis, even though the withholding agent is on a fiscal year reporting basis. *(Department of State Revenue; Reg 6-3-4-8(050); filed Oct 15, 1979, 11:15 am: 2 IR 1550; errata, 2 IR 1743)*

45 IAC 3.1-1-102 Changes in form WH-4

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4

Sec. 102. Refiling of State Form WH-4. The Employee's Withholding Exemption and County Residence Certificate (Form WH-4) must be refiled with the employer to show any change in residence or number of exemptions.

Change of Residence

All employees who change their county of residence or their county of principal work activity are required to file a new state Form WH-4 by January 1 of the following year.

Change in Exemptions

You may file a new WH-4 at any time if the number of your exemptions increase. You must file a new WH-4 within 10 days if the number of exemptions previously claimed by you decreases for any of the following reasons:

(a) Your wife (or husband) for whom you have been claiming an exemption is divorced or legally separated, or claims her (or his) own exemption on a separate certificate.

(b) The support of a dependent for whom you claim an exemption is taken over by someone else, so that you no longer expect to furnish more than half the support for the year.

(c) You find that a dependent for whom you claim an exemption will receive $750.00 or more of income of his own during the year.

Other decreases in exemptions such as the death of a spouse or a dependent, do not affect your withholding until the next year, but require the filing of a new WH-4 by December 1 of the year in which they occur. *(Department of State Revenue; Reg 6-3-4-8(060); filed Oct 15, 1979, 11:15 am: 2 IR 1550; errata, 2 IR 1743)*

45 IAC 3.1-1-103 Refund or credit for excess withholding

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4

Sec. 103. Refunds of Excess Withholding and Income Tax Credits. If the amount of withholding exceeds an employee's tax as imposed by these regulations *[45 IAC 3.1]*, the Indiana Department of Revenue will refund the amount of excess withholding deduction; however, such excess or part thereof may be applied against any outstanding claim or liability which the employee owes the Department. Neither will a refund of excess withholding be made to an employee who fails to file his Indiana Individual Income Tax Return within two (2) years from its initial due date, nor will any tax refund be made for an amount less than one dollar ($1.00).

An excess withholding deduction in no way relieves any employee from the obligation of filing an Indiana Individual Income Tax Return by the fifteenth day of the fourth month following the close of the individual's taxable year. In the case of withholding

deductions not exceeding or not equaling the amount of tax due, the unpaid tax must be paid on the due date of the return. *(Department of State Revenue; Reg 6-3-4-8(070); filed Oct 15, 1979, 11:15 am: 2 IR 1550; errata, 2 IR 1743)*

45 IAC 3.1-1-104 Information returns (Repealed)

Sec. 104. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-105 Annual return of partnership or trust fund

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4-10; IC 6-3-4-11

Sec. 105. (a) A partnership must file an annual return, IT-65, with the department, disclosing each partner's distributive share of partnership income, on or before the fifteenth day of the fourth month following the close of the partnership's accounting year. Any partnership doing business in Indiana or deriving gross income from sources within Indiana is required to file the return.

(b) As used in this section, "partner's distributive share" means the amount determined under Section 704 of the Internal Revenue Code and its prescribed regulations before any modifications required by Indiana tax statutes.

(c) A Form IT-65 must be filed with Indiana by a bank with common trust funds filing a Form 1065 for federal income tax purposes. When reporting for Indiana purposes, a bank with common trust funds must comply with the provisions of Regulation 1.6032-1 of the Internal Revenue Code. *(Department of State Revenue; Reg 6-3-4-10(010); filed Oct 15, 1979, 11:15 a.m.: 2 IR 1551; errata, 2 IR 1743; filed May 13, 1993, 5:00 p.m.: 16 IR 2344)*

45 IAC 3.1-1-106 Partner's distributive share

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3-2-2; IC 6-3-4-11

Sec. 106. (a) A partnership is not subject to the adjusted gross income tax. The partners will include their share of partnership income whether distributed or undistributed on their separate or individual returns.

(b) An individual will report as follows:

(1) The distributive share of a resident partner will be reported in total no matter where the partnership's business is located or in which states it does business.

(2) The distributive share of a nonresident partner will be reported after apportionment to determine the partnership income derived from sources within Indiana. This determination will be accomplished by use of the apportionment formula described in IC 6-3-2-2(b).

(3) A resident partner's distributive share of income will be adjusted by the partner's proportionate share of the partnership's income that is exempt from taxation under the Constitution and statutes of the United States and by the partner's proportionate share of the partnership's deductions allowed or allowable under Section 62 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States or for taxes on property levied by any subdivision of any state of the United States.

(4) A nonresident partner's distributive share of income will be adjusted by the partner's proportionate share of the partnership's income that is exempt from taxation under the Constitution and statutes of the United States and by the partner's proportionate share of the partnership's deductions allowed or allowable under Section 62 of the Internal Revenue Code for taxes based on or measured by income levied at the state level by any state of the United States or for taxes on property levied by any subdivision of any state of the United States determined by use of the apportionment formula described in IC 6-3-2-2(b).

(c) A corporate partner will report its share in accordance with section 153 of this rule. *(Department of State Revenue; Reg 6-3-4-11(010); filed Oct 15, 1979, 11:15 a.m.: 2 IR 1551; errata, 2 IR 1743; filed May 13, 1993, 5:00 p.m.: 16 IR 2344)*

45 IAC 3.1-1-107 Partnership withholding requirements

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1; IC 6-3-2-2; IC 6-3-4-12; IC 6-3.5

Sec. 107. (a) A partnership is required to withhold income taxes at the rates provided for under IC 6-2.1, IC 6-3, and IC 6-3.5 on any nonresident partner's distributive share of partnership income at the time the income is paid or credited to such partner as follows:

(1) For an individual partner, the adjusted gross income tax withheld shall be based on Indiana source income only, as determined by use of the apportionment formula described in IC 6-3-2-2(b), if applicable. This withholding requirement does not apply to withdrawals from the partner's drawing accounts, but applies to distributions to their accounts in the form of credits or payments based on anticipated profits or actual current profits.

(2) For a partner other than an individual partner, the income tax withheld may be calculated using any reasonable method designed to reflect the ultimate tax liability due Indiana because of the partnership's activities. As used in this section, "nonresident corporate partner" does not include a foreign corporation qualified to do business in Indiana.

(b) The partnership shall file a return and pay the tax on a monthly basis. The return and payment are due the thirtieth day of the month following the month for which the tax was withheld. However, if the total income taxes withheld by the partnership are less than fifty dollars ($50) per month, the tax shall be paid and returns remitted quarterly on a calendar year basis, with payment due the last day of the month following the close of the calendar quarter. If a partnership is withholding on a monthly basis but in any month withholds less than fifty dollars ($50), the lesser amount shall be remitted on a monthly basis to maintain the status of monthly reporting.

(c) If the partnership pays or credits amounts to its nonresident partners only one (1) time each year, it will be permitted to file one (1) return and payment each year. The return and payment are due thirty (30) days after the partnership's year end.

(d) The withholding requirements of IC 6-3-4-12 do not relieve any partnership from filing its annual return, IT-65, nor do they relieve any nonresident partner from filing an annual income tax return.

(e) For individual partners only, a partnership is allowed to file a composite adjusted gross income tax return on behalf of some or all non-Indiana resident partners if the partnership complies with all of the requirements outlined in Income Tax Information Bulletin #72 that is in effect for the taxable year in question. An individual nonresident partner who properly elects to participate in the composite return will not be required to file an individual adjusted gross income tax return. *(Department of State Revenue; Reg 6-3-4-12(010); filed Oct 15, 1979, 11:15 a.m.: 2 IR 1551; errata, 2 IR 1743; filed May 13, 1993, 5:00 p.m.: 16 IR 2345)*

45 IAC 3.1-1-108 Partnership withholding returns

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4-8.1; IC 6-3-4-12

Sec. 108. Partnership Withholding Returns. Partnerships required to withhold adjusted gross income tax under IC 6-3-4-12 shall make returns (Form WH-1) with each payment of tax to the Department, disclosing thereon the total amounts paid or credited to nonresident partners, the tax withheld therefrom, and such other information as the Department may require. The partnership must also file an annual withholding return, Form WH-3 (including a copy of the WH-18 furnished to each nonresident) within thirty (30) days of the close of the calendar year. The partnership must furnish Form WH-18 to each nonresident partner not later than thirty (30) days from the close of the calendar year as proof that the tax upon his share of the partnership income has been withheld. *(Department of State Revenue; Reg 6-3-4-12(020); filed Oct 15, 1979, 11:15 am: 2 IR 1552; errata, 2 IR 1743)*

45 IAC 3.1-1-109 Withholding requirements for subchapter S corporations

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4-8.1; IC 6-3-4-13

Sec. 109. Subchapter S Corporations–Withholding Requirements. Small business corporations electing Subchapter S status under Internal Revenue Code section 1372 are required to withhold adjusted gross income tax and county adjusted gross income tax on any nonresident shareholder's share of taxable income of the corporation, whether distributed or undistributed, and pay such amounts to the Department in the manner described in Regulation 6-3-4-12(010) *[45 IAC 3.1-1-107]* and (020) *[45 IAC 3.1-1-108]*. Such corporations shall make monthly (or quarterly) and annual returns as provided in Regulation 6-3-4-12(020) *[45 IAC 3.1-1-108]* and furnish a copy of form WH-18 to each nonresident shareholder as provided in that regulation. *(Department of State Revenue; Reg 6-3-4-13(010); filed Oct 15, 1979, 11:15 am: 2 IR 1552; errata, 2 IR 1743)*

45 IAC 3.1-1-110 Consolidated returns of affiliated groups

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4-14

Sec. 110. Consolidated Returns. An affiliated group as defined in IC 6-3-4-14(b) may file consolidated returns for Adjusted Gross Income Tax and Supplemental Net Income Tax purposes if the members of the affiliated group consent to follow the provision of IC 6-3-4-14 and the regulations established thereunder, including Federal regulations promulgated pursuant to Internal Revenue Code section 1502 which are incorporated by reference in IC 6-3-4-14. The inclusion of a member of an affiliated group in the consolidated return is deemed to be its consent to the consolidated filing. Once an election is made to file consolidated, a taxpayer must obtain written permission from the Department to change from this method of reporting.

Taxpayers filing consolidated returns should notify the Department of their election to so file by attaching to their first consolidated return a statement indicating which corporations are joining in the return. In addition, a worksheet must accompany all consolidated returns showing the consolidated income of the affiliates. *(Department of State Revenue; Reg 6-3-4-14(010); filed Oct 15, 1979, 11:15 am: 2 IR 1552; errata, 2 IR 1743)*

45 IAC 3.1-1-111 Membership in affiliated groups; bank holding companies

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2; IC 6-3-4-14

Sec. 111. Affiliated Group. The Adjusted Gross Income Tax Act adopts the definition of "affiliated group" contained in Internal Revenue Code section 1504, except that no member of the affiliated group may be included in the Indiana return unless it has adjusted gross income derived from sources within the state, as that phrase is defined in IC 6-3-2-2. For purposes of this subsection, "Adjusted Gross Income derived from sources within the state" means either income or losses derived from activities within the state.

Domestic International Sales Corporations (DISC'S) which are prohibited under the Internal Revenue Code from filing consolidated returns may not be included in the affiliated group for Indiana adjusted gross income tax purposes.

If any bank is a member of an affiliated group for Federal income tax purposes, it cannot be included as an affiliated member for Indiana adjusted gross income tax purposes, since the banking entity is not subject to the adjusted gross income tax. Any gross income tax liability of a bank must be added separately after the composite tax of the affiliated group has been computed. For supplemental net income tax purposes, the members of an affiliated group, including the banking entity, may compute the supplemental net income tax on a consolidated basis. Since banks are not included in the consolidation under the Adjusted Gross Income Tax Act, a separate schedule must accompany the consolidated return in order to compute the adjusted gross income of the affiliated group and subsequently the supplemental net income tax liability.

In the case of a bank holding company, the holding company may be allowed a special deduction for dividends received from its banking entity for Indiana adjusted gross income tax purposes in accordance with section 243(a)(1) of the Internal Revenue Code. The 100% dividend exclusion for those holding companies filing a consolidated return does not apply since, for Indiana adjusted gross income tax purposes, the banking entity is not taxable under the Act and thus cannot be part of the consolidation. *(Department of State Revenue; Reg 6-3-4-14(020); filed Oct 15, 1979, 11:15 am: 2 IR 1552; errata, 2 IR 1743)*

45 IAC 3.1-1-112 Consolidated returns for other taxes not required

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4-14

Sec. 112. Consolidated Indiana Gross Income Tax and Federal Income Tax Returns. Whether an affiliated group is or is not filing Indiana gross and/or Federal income tax returns on a consolidated basis has no bearing on its eligibility to file consolidated adjusted gross income tax returns. However, the Department strongly recommends that taxpayers filing on a consolidated basis for purposes of one tax, do likewise for purposes of all taxes. If returns are filed separately for one tax and consolidated for the other, the burden will be on the taxpayers to provide a complete breakdown of the affiliated corporations' gross, adjusted gross, and supplemental net income tax liabilities, quarter payments, and other credits. *(Department of State Revenue; Reg 6-3-4-14(030); filed Oct 15, 1979, 11:15 am: 2 IR 1553; errata, 2 IR 1743)*

45 IAC 3.1-1-113 Withholding on distributions to nonresident beneficiaries of Indiana trusts and estates

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4-15; IC 6-3-6; IC 6-8.1-10

Sec. 113. Withholding on Distributions To Nonresident Beneficiaries of Indiana Trusts and Estates. Beginning January 1, 1978, Indiana trusts and estates distributing income subject to withholding to nonresident beneficiaries are required to withhold adjusted gross income tax from such distribution. "Income subject to withholding" is defined as all income subject to adjusted gross income tax, except interest and dividends. An allowance is made for expenses, administrative fees, a personal exemption, and other allowable adjustments. Examples of income subject to withholding include farm income, business income, and rents and royalties from Indiana real estate.

These withholding provisions apply only to distributions to nonresident beneficiaries. A beneficiary's residency should be determined at the time of distribution. However, if a resident beneficiary later becomes a nonresident, the fiduciary is required to withhold on all subsequent payments to that beneficiary. Part-year residents and nonresidents should take credit on their adjusted gross income tax returns for any tax withheld.

The withholding rate for these fiduciaries is two percent (2%). Any deficiency in taxes withheld and remitted to the state will subject the trust or estate to the penalties and interest imposed by IC 6-3-6. The Department may, at its option, require the withholding agent to post a bond to ensure payment of the tax. *(Department of State Revenue; Reg 6-3-4-15(010); filed Oct 15, 1979, 11:15 am: 2 IR 1553; errata, 2 IR 1743)*

45 IAC 3.1-1-114 Withholding returns and payments by trusts and estates

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4-15

Sec. 114. Withholding Returns and Remittances of Trusts and Estates. Trusts and estates required to withhold adjusted gross income tax by IC 6-3-4-15 will file monthly returns on Form WH-1. Remittance will be made with the return, and such remittance will be due on the thirtieth day of the month following the month during which the tax was withheld. If the fiduciary cannot determine what part of the distribution is made up of "income subject to withholding," the Department will permit the tax to be remitted when such determination can be made, i.e., at the end of the calendar or fiscal year when the net profits of a business can be determined.

Trusts and estates must furnish to each nonresident beneficiary a Form WH-18 by the thirtieth day of the month following the close of the taxable year. This statement will indicate the total distributions to the beneficiary for the year and the amount of tax withheld, and will accompany the beneficiary's annual return as proof of payment. *(Department of State Revenue; Reg 6-3-4-15(020); filed Oct 15, 1979, 11:15 am: 2 IR 1553; errata, 2 IR 1743)*

45 IAC 3.1-1-115 Reciprocal agreement states

Authority: IC 6-8.1-3-3
Affected: IC 6-3-5-1

Sec. 115. Reciprocity Agreements. Reciprocal income tax agreements now exist between Indiana and the states of Illinois, Kentucky, Michigan, Ohio, Pennsylvania and Wisconsin. The agreements provide that Indiana will not impose its adjusted gross income tax on salaries, wages and commissions earned by legal residents of these states in Indiana and they in turn will not impose their individual income tax on wages, salaries and commissions earned by legal residents of Indiana in those states. Employees resident in any of the above-mentioned states and working in Indiana must submit to their Indiana employer an affidavit as to their legal residence as proof that no withholding of Indiana taxes is required (See Regulation 6-3-3-3(a)(030) *[45 IAC 3.1-1-76]*). *(Department of State Revenue; Reg 6-3-5-1(010); filed Oct 15, 1979, 11:15 am: 2 IR 1553; errata, 2 IR 1743)*

45 IAC 3.1-1-116 Credit against liability instead of refund (Repealed)

Sec. 116. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-117 Payment of refunds; interest (Repealed)

Sec. 117. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-118 Demand for additional taxes (Repealed)

Sec. 118. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-119 Penalty for nonpayment (Repealed)

Sec. 119. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-120 Penalty for fraudulent nonpayment (Repealed)

Sec. 120. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-121 Failure to timely file or pay; penalty (Repealed)

Sec. 121. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-122 Jeopardy assessment and collection (Repealed)

Sec. 122. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-123 Penalty for failure to file information returns (Repealed)

Sec. 123. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-124 Preparation of return by department; penalty (Repealed)

Sec. 124. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-125 Time limitation on assessment by department (Repealed)

Sec. 125. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-126 Proposed assessment of additional tax; protest (Repealed)

Sec. 126. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-127 Hearings on protest of proposed assessment (Repealed)

Sec. 127. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-128 Agreed extension of time for proposed assessment (Repealed)

Sec. 128. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-129 Automatic extension of time for proposed assessment (Repealed)

Sec. 129. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-130 Warrants for collection of taxes; execution (Repealed)

Sec. 130. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-131 Collection by civil action by department (Repealed)

Sec. 131. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-132 Injunction against continuing business (Repealed)

Sec. 132. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-133 Receivership (Repealed)

Sec. 133. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-134 Cumulative remedies (Repealed)

Sec. 134. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-135 List of unsatisfied warrants (Repealed)

Sec. 135. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-136 Employment of collection attorneys (Repealed)

Sec. 136. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-137 Time limitation on refund claims; assessment; interest (Repealed)

Sec. 137. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-138 Filing refund claim (Repealed)

Sec. 138. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-139 Hearings on refund claims (Repealed)

Sec. 139. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-140 Suit for refund (Repealed)

Sec. 140. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-141 Limited confidentiality of taxpayer information (Repealed)

Sec. 141. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-142 Corporate dissolution and tax payment (Repealed)

Sec. 142. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-143 Retention of taxpayer's books and records (Repealed)

Sec. 143. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-144 Disclosure of other tax returns and schedules (Repealed)

Sec. 144. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-145 False records prohibited (Repealed)

Sec. 145. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-146 Penalties for tax evasion (Repealed)

Sec. 146. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-147 Prosecution of violators (Repealed)

Sec. 147. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-148 Rulemaking powers; distribution of rules and forms (Repealed)

Sec. 148. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-149 Investigations by department; cooperation (Repealed)

Sec. 149. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-150 Exemptions from gross income tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1; IC 6-3-2-2.8

Sec. 150. (a) Individuals, trusts, estates, and fiduciaries subject to the adjusted gross income tax, small business corporations exempt from adjusted gross income tax under IC 6-3-2-2.8, and partnerships are exempt from IC 6-2.1.

(b) However, if IC 6-3 is held inapplicable or invalid with respect to any of the taxpayers described in subsection (a), this exemption is revoked for the tax periods for which the tax is held invalid. *(Department of State Revenue; Reg 6-3-7-1(a)(010); filed Oct 15, 1979, 11:15 a.m.: 2 IR 1559; errata, 2 IR 1743; filed May 13, 1993, 5:00 p.m.: 16 IR 2346)*

45 IAC 3.1-1-151 Taxation of partnerships with corporate members (Repealed)

Sec. 151. *(Repealed by Department of State Revenue; filed May 13, 1993, 5:00 p.m.: 16 IR 2346)*

45 IAC 3.1-1-152 Taxation of partners of partnerships with corporate members (Repealed)

Sec. 152. *(Repealed by Department of State Revenue; filed May 13, 1993, 5:00 p.m.: 16 IR 2346)*

45 IAC 3.1-1-153 Taxation of a corporate partner

Authority: IC 6-8.1-3-3
Affected: IC 6-3

Sec. 153. (a) A corporate partner's share of profit or loss from a partnership will be included in its federal taxable income and therefore generally subject to the same rules as any other adjusted gross income.

(b) If the corporate partner's activities and the partnership's activities constitute a unitary business under established standards, disregarding ownership requirements, the business income of the unitary business attributable to Indiana shall be determined by a three (3) factor formula consisting of property, payroll, and sales of the corporate partner and its share of the partnership's factors for any partnership year ending within or with the corporate partner's income year, with the following modifications:

(1) The value of property which is rented or leased by the corporate partner to the partnership or vice versa shall, with respect to the corporate partner, be excluded from the property factor of the partnership or eliminated to the extent of the corporate partner's interest in the partnership, whichever the case may be, in order to avoid duplication.

(2) Intercompany sales between the corporate partner and the partnership shall be eliminated from the corporate partner's sales factor as follows:

(A) Sales by the corporate partner to the partnership to the extent of the corporate partner's interest in the partnership.

(B) Sales by the partnership to the corporate partner not to exceed the corporate partner's interest in all partnership sales.

(c) If the corporate partner's activities and the partnership's activities do not constitute a unitary business under established standards, disregarding ownership requirements, the corporate partner's share of the partnership income attributable to Indiana shall be determined as follows:

(1) If the partnership derives business income from sources within and without Indiana, the business income derived from sources within Indiana shall be determined by a three (3) factor formula consisting of property, payroll, and sales of the partnership.

(2) If the partnership derives business income from sources entirely within Indiana, or entirely without Indiana, such income shall not be subject to formula apportionment.

(d) A partner's distributive share of income will be adjusted by the partner's proportionate share of the partnership's income that is exempt from taxation under the Constitution and statutes of the United States and by the partner's proportionate share of the partnership's deductions allowed or allowable under Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States or for taxes on property levied by any subdivision of any state of the United States.

(e) After determining the amount of business income attributable to Indiana under subsection (c), the corporate partner's distributive share of such income shall be added to the corporate partner's other business income apportioned to Indiana and its nonbusiness income, if any, allocable to Indiana, in determining the corporate partner's total taxable income. *(Department of State Revenue; 45 IAC 3.1-1-153; filed May 13, 1993, 5:00 p.m.: 16 IR 2346)*

45 IAC 3.1-1-154 Airport development zones

Authority: IC 6-8.1-3-3; IC 8-22-3.5-15
Affected: IC 6-3; IC 8-22-3.5-3; IC 36-3-1

Sec. 154. (a) A person who locates and operates a qualified airport development project in an airport development zone in a consolidated city shall not incur any adjusted gross income tax liability or supplemental net income tax liability as a result of the following activities:

(1) Locating the project in the consolidated city.

(2) The construction or completion of the project.

(3) The employment of personnel or the ownership or rental of property at or in conjunction with the project.

(4) The operation of the project or the activities at or in connection with the project.

In other words, the person's apportionment factor will not change due to the completion or operation of the project. As an example, assume that the project is an airline maintenance facility. At the completion of the project, the facility is worth six hundred million dollars ($600,000,000). The payroll from operating the facility is two hundred million dollars ($200,000,000). The person also realizes fifty million dollars ($50,000,000) in its first year of operations from maintenance performed on airplanes belonging to other parties and from the sale of airplane parts delivered within the airport development zone. These amounts would not appear in either

the numerator or the denominator of their respective factors. Also, the person will not be subject to adjusted gross income tax or supplemental net income tax on nonbusiness income earned by the person that is allocable to the airport development zone.

(b) As used in subsection (a), "qualified airport development project" has the same meaning as set forth in IC 8-22-3.5-3.

(c) As used in subsection (a), "airport development zone" means an airport development zone created under IC 8-22-3.5.

(d) As used in subsection (a), "consolidated city" means a city with a population of two hundred fifty thousand (250,000) or more that has become a consolidated city under IC 36-3-1.

(e) The exemption provided by subsection (a) is effective for a period of thirty-five (35) years beginning January 1, 1991. *(Department of State Revenue; 45 IAC 3.1-1-154; filed Feb 25, 1995, 4:30 p.m.: 18 IR 1810)*

Rule 2. Supplemental Net Income Tax

45 IAC 3.1-2-1 Corporations subject to tax

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-10; IC 6-3-7-1; IC 6-3-8-2; IC 27-1-18-2

Sec. 1. Corporations Taxable for Supplemental Corporate Net Income Tax. The Indiana Supplemental Net Income Tax is imposed upon the net income (See Reg. 6-3-8-2(b)(010) *[45 IAC 3.1-2-2]* of any "corporation" as defined in IC 6-3-1-10. This includes partnerships with corporate partners subject to Gross and Adjusted Gross Income Tax under IC 6-3-7-1(b). The tax is also imposed upon banks, trust companies, national banking associations, private banks, mutual savings banks, savings and loan associations, and domestic insurance companies organized under Indiana law, notwithstanding that such entities are exempt from Adjusted Gross Income Tax under IC 6-3-2-3(c) or (d) *[Repealed, as amended by P.L.79-1983, SECTION 2, and as also amended by P.L.82-1983, SECTION 5, by P.L.47-1984, SECTION 7(b).]*, or IC 27-1-18-2, or any other law of the State of Indiana. *(Department of State Revenue; Reg 6-3-8-2(a)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1560; errata, 2 IR 1743)*

45 IAC 3.1-2-2 Definition of net income

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3-2-2; IC 6-3-3-1; IC 6-3-8-2; IC 27-1-18-2

Sec. 2. "Net Income" Defined. "Net income" for Supplemental Net Income Tax purposes is a corporation's Adjusted Gross Income as defined in IC 6-3-1-3.5(b) derived from sources within the state as determined under IC 6-3-2-2(b), less the greater of:

(1) The taxpayer's adjusted gross income tax liability before the allowance for tax credits provided in IC 6-3-3-1(-7) (taxes withheld; taxes paid to other states, charitable contributions, etc.); or

(2) The taxpayer's gross income tax liability; or

(3) The taxpayer's premium tax as imposed by IC 27-1-18-2.

However, the net income of an Indiana insurance company is computed as follows for Supplemental Net Income Tax purposes:

(1) If the company is a life insurance company taxable under Internal Revenue Code section 801(a), begin with "life insurance company taxable income" as defined in Internal Revenue Code section 802(b); or, if it is a mutual insurance company taxable under Internal Revenue Code section 821(a), begin with mutual insurance company taxable income" as defined in Internal Revenue Code section 821(b); or if it is an insurance company taxable under Internal Revenue Code section 831, begin with "taxable income" as defined in Internal Revenue Code section 832; and

(2) Multiply this base amount by a fraction the numerator of which is the insurer's direct premium and annuity considerations for insurance on property or risks in Indiana, and the denominator of which is the insurer's direct premiums and annuity considerations for insurance on property or risks everywhere.

(3) Adjust this amount by subtracting the greater of

(a) The taxpayer's gross income tax liability.

(b) The taxpayer's premium tax liability.

If the above computation results in a negative figure, no supplemental net income tax is due and no carryback or carryforward loss is permitted. *(Department of State Revenue; Reg 6-3-8-2(b)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1560; errata, 2 IR 1743)*

45 IAC 3.1-2-3 Tax rate (Repealed)

Sec. 3. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 3.1-2-4 Adoption of provisions of adjusted gross income tax; exceptions

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2; IC 6-3-3-2; IC 6-3-3-5; IC 6-3-4-14; IC 6-3-8-5

Sec. 4. Adoption of Provisions of the Adjusted Gross Income Tax Act. The Supplemental Net Income Tax adopts by reference provisions in the Adjusted Gross Income Tax Act relating to the imposition, collection, payment, and administration of the adjusted gross income tax, except that the tax credit allowed under IC 6-3-3-2 and IC 6-3-3-5, and the exemption provisions of IC 6-3-2-3(c) and (d) *[Repealed, as amended by P.L.79-1983, SECTION 2, and as also amended by P.L.82-1983, SECTION 5, by P.L.47-1984, SECTION 7(b).]* are not applicable. Also, IC 6-3-2-2 shall not apply to the allocation and apportionment of the net income of domestic insurance companies. In the case of taxpayers exempt from the adjusted gross income tax but subject to supplemental net income tax, the taxpayer shall be entitled to file a consolidated supplemental net income tax return if it meets the requirements of IC 6-3-4-14 and Regulations 6-3-4-14(010) to 6-3-4-14(030) *[45 IAC 3.1-1-110 to 45 IAC 3.1-1-112]*. *(Department of State Revenue; Reg 6-3-8-5(010); filed Oct 15, 1979, 11:15 am: 2 IR 1560; errata, 2 IR 1743)*

Rule 3. County Adjusted Gross Income Tax

45 IAC 3.1-3-1 Persons and income subject to tax; administration

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3.5-1.1

Sec. 1. Definitions. The County Adjusted Gross Income Tax is imposed on individuals who are residents of adopting counties, and on individuals who are residents of non-adopting counties but who have their principal place of business or employment in an adopting county. For residents of adopting counties, the tax is imposed on adjusted gross income as defined in IC 6-3-1-3.5(a). However, residents of non-adopting counties and nonresidents of the state with a principal place of business or employment in an adopting county are taxable only on the adjusted gross income derived from the principal place of business or employment.

The county tax is administered by the Department of Revenue along with the individual Indiana Adjusted Gross Income Tax. This tax is distributed by the Department to the treasurers of all adopting counties. The county treasurers then certify an amount to each participating taxing unit within the county. *(Department of State Revenue; Reg 6-3.5-1-1(010); filed Oct 15, 1979, 11:15 am: 2 IR 1560; errata, 2 IR 1743)*

45 IAC 3.1-3-2 Tax rates; income subject to tax

Authority: IC 6-8.1-3-3
Affected: IC 6-3.5-1.1

Sec. 2. Rate of Tax. Each county has the option of adopting one of three different rates applicable to county residents; one-half of one percent (1/2%), three-fourths of one percent (3/4%), or one percent (1%). The adopting counties must also assess all non-county residents who derive their principal source of income either from business or employment in the adopting county at the rate of one-fourth of one percent (1/4%) *[sic.]*. This 1/4% rate imposed on non-county residents is applicable only when the non-county resident's county of residence fails to adopt the CAGIT.

Income Subject to CAGIT:

Resident of Adopting County: If an individual's county of residence adopts the CAGIT his entire adjusted gross income will be subject to the county tax. The entire adjusted gross income will be subject to the CAGIT at the tax rate adopted in the individual's county of residence.

Resident of Non-Adopting County: If an individual resides in a non-adopting county but his principal place of business or employment is in an adopting county only the adjusted gross income derived from his principal place of business or employment will be subject to the CAGIT. The adjusted gross income derived in this county will be subject to the CAGIT at the 1/4% rate.

Out-of-State Residents: If an individual resides outside the State of Indiana but his principal place of work activity is in an Indiana adopting county only the adjusted gross income derived from the Indiana adopting county will be subject to the CAGIT. The adjusted gross income derived from the Indiana adopting county will be subject to the CAGIT at the 1/4% rate.

The tax rate of each adopting county is published annually by the Indiana Department of Revenue. *(Department of State Revenue; Reg 6-3.5-1-2(a)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1561; errata, 2 IR 1743)*

45 IAC 3.1-3-3 Persons and income subject to tax; exemptions; joint returns

Authority: IC 6-8.1-3-3
Affected: IC 6-3.5-1.1

Sec. 3. Imposition of Tax. An individual is subject to county tax if he lives or works in an adopting county on January 1 of the tax year. A taxpayer's county of residence and principal work activity on this date alone determine whether he is subject to CAGIT for the entire year. If a taxpayer lives in an adopting county on January 1 and later in the year moves to a non-adopting county, he is subject to county tax on his state taxable income for the entire year. Conversely, if a taxpayer lives in a non-adopting county on January 1 and later in the year moves to an adopting county, he is not subject to county tax for that year.

If a taxpayer's county of residence on January 1 is a non-adopting county, but his county of principal work activity is an adopting county he must pay CAGIT on the income derived from his principal work activity for the entire year. Even though he may later begin working in a non-adopting county, he must pay county tax for the entire year on the income earned from his principal activity. However, if an individual neither lived nor worked in an adopting county on January 1, he is not subject to CAGIT on any part of his income even though his county of residence or principal work activity changes to an adopting county during the year.

An exception is in the case of an individual who as of January 1 works in an adopting county but is a nonresident of Indiana or who is a resident of Indiana on January 1 but moves out of Indiana during the tax year. He is subject to county tax only on income from principal work activity derived from Indiana sources; i.e., an individual who as of January 1 had his county of residence or principal work activity in an adopting Indiana county is not liable for CAGIT on income earned outside the state while not a resident of the state.

If an individual is subject to CAGIT on income from his principal work activity, the nonresident tax rate of 1/4% shall be applied against the taxpayer's adjusted gross income less exemptions derived from his principal work activity for the entire year. Adjusted gross income derived from principal work activity is defined as gross income from that activity less all deductions allowed per these regulations *[45 IAC 3.1]* against such income.

Husbands and wives are treated separately under CAGIT; i.e., each must determine their respective county of residence and county of principal work activity as of January 1 and in most cases will compute their respective county tax due, based on their separate adjusted gross income less allowable exemptions. Taxpayer and spouse will complete a joint county tax return only if they were both residents or working in the same adopting county as of January 1; this is true even for taxpayers who file a joint Indiana individual income tax return. In no case may a taxpayer or couple filing jointly take more than the number of exemptions allowed on their state return.

If a person files a joint return with his spouse and both are taxable for county option tax because they live in the same adopting county, they may combine their income and their exemptions regardless of whether only one spouse actually earns income.

If a person files a joint return with his spouse and only he or his spouse is taxable for county option tax then the person who is taxable may take all the exemptions claimed on the joint return except the other spouse's personal and special income exemption.

If a person files a joint return and he is taxable at one rate on his income and his spouse is taxable at another rate on her income then the person with the most income should claim all the exemptions taken on the joint return except the other spouse's personal exemption and special income exemption. The other spouse should then take his or her personal and special income exemptions.

Residents of reciprocal agreement states subject only to CAGIT on income derived from an adopting county may claim the full number of exemptions without prorating.

Examples:

(1) Nonresident from Reciprocal State working part of the year in Indiana.

Fred Smith resides in Saginaw, Michigan, and as of January 1 operates a dental clinic in an Indiana adopting county (Elkhart). On March 1, he moves the clinic to Saginaw. During January and February he had Schedule C income of $10,000.00 in Elkhart County and from March through December had Schedule C income of $45,000.00 in Michigan. Of the $55,000.00 total income, he is liable for CAGIT only on the $10,000.00 earned in Elkhart County.

(2) Non-adopting county residents with one spouse working in an adopting county.

Thomas and Teresa Jones reside in County C (non-adopting) where he is employed. Mrs. Jones was employed as of January 1 in County D (adopting). During the tax year Mr. Jones earned $12,000.00 and Mrs. Jones earned $10,000.00. Their total state

adjusted gross income is $22,000.00 but they are liable for county tax only on Mrs. Jones' $10,000.00. She is allowed her exemptions of $1,000.00, so she is liable for $22.50 CAGIT to County D; i.e., 1/4% of $9,000.00.

(3) Residents (husband and wife) working in same adopting counties but living in different counties on January 1.

Charles Thomas is a resident of County X (adopting) as of January 1 and during the year he marries Claire who was a resident of County Y (non-adopting) but as of January 1 each was employed in County X. Charles and Claire each earn $10,000.00 in County X during the year. Charlie owes CAGIT on his $10,000.00 income at the resident County X rate. Claire owes CAGIT on her $10,000.00 income at the nonresident rate of 1/4%. Their CAGIT liabilities must be determined separately because they were not residents of the same adopting county as of January 1.

(4) Resident of a non-adopting county working full and part-time in an adopting county.

Pete Franklin resides in County E (non-adopting) and on January 1 he is employed both full and part-time in County F (adopting). During the year he changes jobs and finds new full time employment in County E, maintaining his part-time job in County F. He is taxable on the income from both full time jobs during the entire year to County F at the nonresident rate. He will not, however, be subject on this part-time job because it was not his principal work activity.

(5) Resident of a non-adopting county working in an adopting county, and moving to the adopting county during the year.

David Smith resides in County K (non-adopting), works as an electrician in County O (adopting), has a part-time job in a liquor store in County O, and has rental property in County O, all as of January 1. On June 30 he moves to County O and on August 15 quits his job as an electrician and gets a job in County K as a bartender. His income is:

$10,000.00	as an electrician
8,000.00	as a bartender
3,000.00	as a liquor store clerk
4,000.00	rent
2,000.00	interest
$27,000.00	total income

He is subject to County O tax at the nonresident rate on the income from his principal work activity (electrician and bartender), or $18,000.00.

The computation of County Adjusted Gross Income Tax is to be completed on schedule CO-40, which is an attachment to the Individual Income Tax Return (form IT-40). The county tax computed from form CO-40 is to be carried to the designated area on form IT-40 or IT-40 PNR. *(Department of State Revenue; Reg 6-3.5-1-2(b)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1561; errata, 2 IR 1743)*

45 IAC 3.1-3-4 Credits

Authority: IC 6-8.1-3-3
Affected: IC 6-3-3-3; IC 6-3.5-1.1

Sec. 4. Credits Against County Tax. Credits against CAGIT may be taken only by Indiana residents subject to CAGIT at the county resident rate. Individuals who are nonresidents of Indiana or residents of an Indiana non-adopting county are in no instance allowed to claim these credits against their Indiana county tax liability. The credits are Credit for the Elderly and Credit for Taxes paid Localities Outside of Indiana.

Credit for the Elderly. If allowed credit under Section 37 of the Internal Revenue Code and each credit is taken on their Indiana return, resident county taxpayers may take credit for the elderly against their county liability. The credit allowable is a percentage of the state credit for the elderly as determined by the table below:

County Rate (Resident)	Percent of State Credit for the Elderly Allowed as County Credit for the Elderly
1/2%	25%
3/4%	37.5%
1%	50%

In no case, however, may the allowed credit exceed the county tax liability. If a taxpayer and spouse filing jointly and allowed a credit for the elderly are each subject to a different CAGIT rate, the percentage of state credit allowed as county credit shall be the average of the two.

Example:

Carol Brown, a White County (1% CAGIT rate) resident, is allowed a $30.00 credit for the elderly on her state return. She

would compute her county credit for the elderly as follows:

(A) State credit for the elderly	$30.00
(B) Percentage allowed against CAGIT for White County (form CO-40)	50%
(C) County credit for the elderly allowed (Multiply A. by B.)	$15.00

A taxpayer subject to CAGIT may take a credit for county tax withheld on his Indiana Individual Income Tax Return (form IT-40). Unlike credit for the elderly and credit for taxes paid to localities outside of Indiana, credit for county tax withheld may not be taken on county schedule CO-40. *(Department of State Revenue; Reg 6-3.5-1-2(c)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1562; errata, 2 IR 1743)*

45 IAC 3.1-3-5 Duration and rescission of tax

Authority: IC 6-8.1-3-3
Affected: IC 6-3.5-1.1

Sec. 5. Duration and Rescission of Tax. The CAGIT is in effect until rescinded by the county council. County council means any county council of a county, including a city county council of a consolidated first class city and county. The tax is rescinded by the county council adopting an ordinance to rescind between January 1 and June 1 of any year. If adopted, the rescission is effective July 1 of the year the ordinance is adopted. *(Department of State Revenue; Reg 6-3.5-1-6(010); filed Oct 15, 1979, 11:15 am: 2 IR 1563; errata, 2 IR 1743)*

45 IAC 3.1-3-6 Determination of county of residence

Authority: IC 6-8.1-3-3
Affected: IC 6-3.5-1.1

Sec. 6. County of Residence. An individual's county of residence is determined as of January 1 of each year. A person's county of residence is determined in accordance with the following criteria:

(1) The county in which he maintains his home, if he has one and only one,

(2) or if 1) *[subsection (1) of this section]* does not apply, the county in which he is registered to vote,

(3) or if 1) and 2) *[subsections (1) and (2) of this section]* do not apply, the county in which he registers his personal automobile,

(4) or if 1), 2), and 3) *[subsections (1), (2) and (3) of this section]* do not apply, the county in which he spends the majority of his time during the taxable year.

Example:

On January 1, Harold resides and works in County A which is an adopting county. He is liable for county tax at County A's resident rate on his entire state taxable income.

The CAGIT applies against the entire adjusted gross income of an employee whose county of residence adopts the CAGIT. If the employee resides in a non-adopting county but has his principal place of employment in an adopting county, the CAGIT applies only to that adjusted gross income earned in the adopting county. *(Department of State Revenue; Reg 6-3.5-1-9(010); filed Oct 15, 1979, 11:15 am: 2 IR 1563; errata, 2 IR 1743)*

45 IAC 3.1-3-7 Determination of county of principal work activity

Authority: IC 6-8.1-3-3
Affected: IC 6-3.5-1.1

Sec. 7. County of Principal Work Activity. An individual's county of principal (non-temporary) work activity is that county where the taxpayer receives the greatest percentage of his gross income from salaries, wages, commissions, fees, or other income of this type. If an individual is self-employed the county of principal work activity is that county where the individual's principal place of business is located. If an individual has two or more sources of income from two or more different counties, principal source will be evidenced by the percent of income received from each county and the percent of time spent in each county. If an individual resides outside the State of Indiana but his principal place of work activity is in an Indiana adopting county only the adjusted gross income derived from that county is subject to CAGIT. Reciprocal agreements between Indiana and other states do not affect a taxpayer's liability under CAGIT. Adjusted gross income derived from the Indiana adopting county is subject to CAGIT at the rate

of 1/4%.

Example:

Harry Parker resides and has a part-time job in County Y which is not an adopting county. He has a full time job in County Z which does adopt CAGIT and which renders the larger portion of his income. His county of principal work activity is County Z, and he is subject to CAGIT at the rate of 1/4%. Conversely, if the full time job was in County Y and the part-time job in County Z, his county of principal work activity would be County Y and he would not be subject to CAGIT.

Residency and Principal Place of Business or Employment

For the 1974 calendar year and all subsequent years, a person's residency and principal place of business or employment will be determined on January 1 of each year. Therefore, if a county adopts CAGIT prior to June 1, 1978 (to be effective on July 1, 1978) a person's residence and principal place of business or employment for the entire 1978 calendar year will be determined according to his residence and principal place of business or employment as of January 1, 1978. Such person's residency and principal place of business or employment for subsequent calendar years will be determined as of January 1, of each year. *(Department of State Revenue; Reg 6-3.5-1-9(020); filed Oct 15, 1979, 11:15 am: 2 IR 1563; errata, 2 IR 1743)*

45 IAC 3.1-3-8 Application of adjusted gross income tax provisions

Authority: IC 6-8.1-3-3
Affected: IC 6-3.5-1.1

Sec. 8. Application of Adjusted Gross Income Tax Provisions. Except where expressly stated, all provisions of the Adjusted Gross Income Tax Act are applicable to the imposition, collection, and administration of County Adjusted Gross Income Tax. *(Department of State Revenue; Reg 6-3.5-1-10(010); filed Oct 15, 1979, 11:15 am: 2 IR 1564; errata, 2 IR 1743)*

45 IAC 3.1-3-9 Reciprocity agreements with out-of-state authorities

Authority: IC 6-8.1-3-3
Affected: IC 6-3.5-1.1

Sec. 9. Reciprocal Agreements Between Local Governments. County Councils of adopting counties are allowed to enter into reciprocity agreements with other taxing authorities outside the State of Indiana. This measure will allow adopting counties to collect the CAGIT from out-of-state employers of Indiana residents.

Reciprocity agreements must coincide with calendar years and a certified copy of the agreement must be sent to the Department of Revenue. The agreement passed by majority vote of the County Council must have been previously approved by the Department of Revenue. *(Department of State Revenue; Reg 6-3.5-1-11(a)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1564; errata, 2 IR 1743)*

45 IAC 3.1-3-10 Credit for taxes paid to out-of-state local governments

Authority: IC 6-8.1-3-3
Affected: IC 6-3.5-1.1

Sec. 10. Credit for Taxes Paid to Localities Outside of Indiana. Taxpayers subject to county tax at the resident rate may take a credit against CAGIT liability for taxes paid to localities outside of Indiana. The credit is limited to the amount of tax paid or the county rate times the amount of income that was taxed by the other locality or to the amount of CAGIT due, whichever is the least. This does not apply to income taxed by any state, but only to income taxed by any subdivision of any state, such as a city or county, outside of Indiana.

The credit will be allowed upon production of satisfactory evidence of payment of tax to the out-of-state subdivision. A copy of the tax return filed with the other locality or a W-2 statement indicating such payment must be attached to the Indiana return.*

Example:

Herbert, a Randolph County (1% CAGIT rate) resident, earned $10,000.00 in Indiana and $3,000.00 in Flint, Michigan. He paid $45.00 to the city of Flint, Michigan. He would compute his credit as follows:

(A) Income taxed by locality outside of Indiana	$3,000.00
(B) Resident county tax rate	1% (.01)
(C) Allowable county credit (form CO-40: multiply A. by B.)	$30.00

Herbert is allowed a $30.00 credit since it is less than the $45.00 tax paid to the city of Flint.

*The credit will not be allowed if the laws of such city or county provide for a credit to the taxpayer for the amount of CAGIT payable.

Note: County Credit for Taxes Paid to Localities Outside of Indiana and County Credit for the Elderly (See Regulation 6-3.5-1-2(c)(010) *[45 IAC 3.1-3-4]*, are the only credits to be entered on the County Option Schedule CO-40, and may not exceed the amount of CAGIT liability. *(Department of State Revenue; Reg 6-3.5-1-11(b)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1564; errata, 2 IR 1743)*

ARTICLE 4. INHERITANCE TAX (REPEALED)

(Repealed by Department of State Revenue; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2041)

ARTICLE 4.1. DEATH TAXATION

Rule 1. Definitions

45 IAC 4.1-1-1 Applicability

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1

Sec. 1. (a) Unless otherwise defined, all terms used in this article shall have the same meaning as those terms are defined in IC 6-4.1.

(b) The definitions in this rule apply throughout this article. *(Department of State Revenue; 45 IAC 4.1-1-1; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2022)*

45 IAC 4.1-1-2 "Appropriate probate court" defined

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-1-2; IC 6-4.1-4; IC 6-4.1-12-1

Sec. 2. "Appropriate probate court" means the probate court of the county in which a resident decedent was domiciled at the time of the decedent's death. If two (2) or more courts in a county have probate jurisdiction, the first court acquiring jurisdiction is the appropriate probate court. *(Department of State Revenue; 45 IAC 4.1-1-2; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2022)*

45 IAC 4.1-1-3 "Class A transferee" defined

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-1-3

Sec. 3. "Class A transferee" means a transferee who is a lineal ancestor or a lineal descendant of the transferor. *(Department of State Revenue; 45 IAC 4.1-1-3; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2022)*

45 IAC 4.1-1-4 "Class B transferee" defined

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-1-3

Sec. 4. (a) "Class B transferee" means a transferee who is a:

(1) brother or sister of the transferor;

(2) descendant of a brother or sister of the transferor; or

(3) spouse, widow, or widower of a child of the transferor.

(b) Brothers and sisters of the half blood and their descendants are Class B transferees.

(c) A widow or widower of a child of the transferor remains a Class B transferee even though the widow or widower remarries before the date of the transferor's death. *(Department of State Revenue; 45 IAC 4.1-1-4; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2022)*

45 IAC 4.1-1-5 "Class C transferee" defined
Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-1-3

Sec. 5. (a) "Class C transferee" means a transferee who is neither a Class A nor a Class B transferee.

(b) A transferee receiving property from a transferor who was the transferee's natural parent shall be taxed as a Class C transferee if such transferee was previously legally adopted.

(c) The term includes an aunt and uncle of the decedent. *(Department of State Revenue; 45 IAC 4.1-1-5; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2022)*

45 IAC 4.1-1-6 "County assessor" defined
Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-12-2

Sec. 6. "County assessor" means the assessor of the county in which a resident decedent was domiciled at the time of the decedent's death. *(Department of State Revenue; 45 IAC 4.1-1-6; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2022)*

45 IAC 4.1-1-7 "County treasurer" defined
Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-9-5

Sec. 7. "County treasurer" means the treasurer of the county in which the inheritance tax due is determined. *(Department of State Revenue; 45 IAC 4.1-1-7; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2022)*

45 IAC 4.1-1-8 "Department" defined
Authority: IC 6-4.1-12-6
Affected: IC 6-4.1

Sec. 8. "Department" means the department of state revenue. *(Department of State Revenue; 45 IAC 4.1-1-8; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2022)*

45 IAC 4.1-1-9 "Federal death tax credit" defined
Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-1-4; IC 6-4.1-11-2

Sec. 9. "Federal death tax credit" means the maximum credit allowable as determined by the calculation set forth under Section 2011(b) through 2011(f) of the Internal Revenue Code for a resident of the United States and under Section 2102(b) of the Internal Revenue Code for a nonresident, noncitizen of the United States. *(Department of State Revenue; 45 IAC 4.1-1-9; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2023)*

45 IAC 4.1-1-10 "In loco parentis parent" defined
Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-1-3

Sec. 10. (a) "In loco parentis parent" means a person who takes the place of a parent; charged, factitiously, with a parent's rights, duties, and responsibilities.

(b) The in loco parentis relationship must have been established prior to the child's fifteenth birthday and have continued for a period of at least ten (10) years.

(c) Except as otherwise provided in section 5 of this rule, if the in loco parentis relationship is established, the child, for the purpose of inheritance tax determination only, will be considered the natural child of the in loco parentis parent.

(d) The favorable tax treatment afforded by an in loco parentis relationship is limited to the parties of the relationship and to

the descendants of the in loco parentis child of the in loco parentis parent. *(Department of State Revenue; 45 IAC 4.1-1-10; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2023)*

45 IAC 4.1-1-11 "Intangible personal property" defined

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-1-5; IC 30-4-2-7

Sec. 11. (a) "Intangible personal property" means a property interest that only exists in legal rights.

(b) Except as provided in subsection (c), the right to the unpaid portion of the purchase price of realty sold under a conditional sales contract is intangible personal property.

(c) The unpaid portion of the purchase price of realty sold under a conditional sales contract that was entered into prior to the decedent's death by the decedent's guardian shall be treated as an interest in realty.

(d) An interest in an oil and gas lease, and an interest created thereby or arising therefrom, is an intangible personal property interest.

(e) An interest in a partnership, regardless of the nature of the partnership's holdings, is an intangible personal property interest.

(f) Except as provided in subsection (g), a beneficiary's equitable interest in a trust is an intangible personal property interest.

(g) If, under the terms of a trust instrument, a trustee is or can be required at some time to distribute realty from the trust corpus to a beneficiary, that beneficiary's interest shall be treated as an interest in realty. *(Department of State Revenue; 45 IAC 4.1-1-11; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2023)*

45 IAC 4.1-1-12 "Nonresident decedent" defined

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-1-7

Sec. 12. (a) "Nonresident decedent" means an individual who was not domiciled in Indiana on the date of the individual's death.

(b) The determination of Indiana residency is independent of another state's determination of the decedent's residence. *(Department of State Revenue; 45 IAC 4.1-1-12; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2023)*

45 IAC 4.1-1-13 "Resident decedent" defined

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-1-11

Sec. 13. (a) "Resident decedent" means an individual who was domiciled in Indiana on the date of the individual's death.

(b) The determination of Indiana residency is independent of another state's determination of the decedent's residence. *(Department of State Revenue; 45 IAC 4.1-1-13; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2023)*

45 IAC 4.1-1-14 "Transferee" defined

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-1-3

Sec. 14. (a) "Transferee" means a person who succeeds to property rights of a deceased individual before or after the death of the deceased individual.

(b) A transferee, except a surviving spouse, will fall into one (1) of three (3) classes determined by the relationship of the transferee to the transferor on the date of the transferor's death. *(Department of State Revenue; 45 IAC 4.1-1-14; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2023)*

Rule 2. Imposition of the Inheritance Tax

45 IAC 4.1-2-1 Time of imposition

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-2-1; IC 6-4.1-6-6

Sec. 1. (a) Except as provided in subsection (b), the inheritance tax is imposed at the time of the decedent's death.

(b) The inheritance tax is imposed on a decedent's transfer of a contingent or defeasible interest in property when the transferee of the interest obtains the beneficial enjoyment or possession of the property if the fair market value of the property interest cannot otherwise be ascertained under 45 IAC 4.1-5 as of the appraisal date prescribed by 45 IAC 4.1-5-2. *(Department of State Revenue; 45 IAC 4.1-2-1; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2024)*

45 IAC 4.1-2-2 Will contest

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-2-1; IC 29-1-7; IC 29-1-9-1

Sec. 2. (a) A will contest may be settled by agreement under IC 29-1-9-1. However, if a will is admitted to probate and never set aside, the inheritance tax shall be imposed on the transfers under the will and not on the transfers by agreement.

(b) If a will is held to be invalid by a court under IC 29-1-7, the inheritance tax shall be imposed pursuant to a prior valid will or the laws of intestate succession. *(Department of State Revenue; 45 IAC 4.1-2-2; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2024)*

45 IAC 4.1-2-3 Disclaimer

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-2-1; IC 32-3-2

Sec. 3. (a) Except as provided in subsection (b), the imposition of the inheritance tax is not affected by a change of title, a transfer, or an agreement among those who succeed to the decedent's property.

(b) A transferee may disclaim any interest in a decedent's property under IC 32-3-2.

(c) If a disclaimer is effective under IC 32-3-2, and the decedent has not provided for another devolution, then the disclaimed interest shall devolve as follows:

(1) Except as provided in subdivision (2), as if the disclaimant had predeceased the decedent.

(2) If the disclaimant is a fiduciary, as if the disclaimed interest had never been created in the disclaimant.

(Department of State Revenue; 45 IAC 4.1-2-3; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2024)

45 IAC 4.1-2-4 Situs of tangible personal property

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-2-2; IC 6-4.1-2-3

Sec. 4. (a) The inheritance tax applies to a property interest transfer of tangible personal property which has an actual situs in Indiana.

(b) The inheritance tax applies to tangible personal property even though it is temporarily located outside of Indiana. However, tangible personal property is not subject to the inheritance tax if it is permanently located outside of Indiana. *(Department of State Revenue; 45 IAC 4.1-2-4; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2024)*

45 IAC 4.1-2-5 Transfer by will or otherwise

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-2-4

Sec. 5. (a) The inheritance tax applies to a devise in payment of a claim, even though such claim would have been allowable as a deduction in the estate of the decedent.

(b) A transfer by will, or otherwise, of a property interest to two (2) or more specifically named transferees shall be divided into equal shares for each transferee, if not specifically provided otherwise, and taxed according to each transferee's relationship to the decedent. *(Department of State Revenue; 45 IAC 4.1-2-5; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2024)*

45 IAC 4.1-2-6 Transfer in contemplation of death

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-2-4

Sec. 6. (a) The inheritance tax applies to a transfer of a property interest made in contemplation of the transferor's death.

(b) A transfer of a property interest is made in contemplation of death if it is made primarily due to any of the following reasons:

(1) To avoid death taxes.

(2) As a substitute for a testamentary disposition.

(3) For any other motive associated with death.

(c) As used in this section, "in contemplation of death" does not mean the general expectation of death which a person entertains. However, its meaning is not restricted to an apprehension that death is imminent.

(d) A transfer of an interest in property within one (1) year of the date of the transferor's death is presumed to be made in contemplation of death. The presumption is rebuttable, but the burden of proof is on the transferee to prove that the transfer was not made in contemplation of death.

(e) To determine whether a transfer was made in contemplation of death, all relevant circumstances, including the following, will be taken into consideration:

(1) The mental and physical condition of the transferor, including the cause of death and whether that condition was known to the transferor on the date of the transfer.

(2) The age of the transferor.

(3) The length of time between the transfer and death.

(4) The existence of a pattern of making gifts.

(5) The portion of the transferor's estate transferred.

(6) Whether the property interest was transferred to a transferee who would have otherwise received the property on the transferor's death.

(f) Unless otherwise exempt, a transfer in contemplation of death of an interest in realty which is held by the entireties is taxable in the estate of the first grantor to die, except for the portion of the original consideration given for the realty by the surviving grantor. *(Department of State Revenue; 45 IAC 4.1-2-6; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2024)*

45 IAC 4.1-2-7 Transfer to take effect in possession or enjoyment at or after death

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-2-4

Sec. 7. (a) The inheritance tax applies to a transfer of an interest in property intended to take effect in possession or enjoyment at or after the transferor's death.

(b) The following are illustrations of transfers of a property interest intended to take effect in possession or enjoyment at or after the transferor's death:

(1) A gift or grant of an interest in property whereby the transferor reserves income from, an interest in, or possession of such property for a period which does not end before the transferor's death.

(2) A transferor purchases realty from the owner and requests a deed to the transferor for life with the remainder to the transferee. This is the same as a transfer from the transferor to the transferee with a retained life estate.

(3) A transfer to a trustee who is required to accumulate the income of the trust during the life of the transferor and transfer the trust corpus to a named beneficiary upon the death of the transferor.

(c) Whenever a transfer described in subsection (a) is an interest in realty held by the entireties subject to joint and successive life estates in the grantors, the transfer is taxable in the estate of the last grantor to die. *(Department of State Revenue; 45 IAC 4.1-2-7; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2025)*

45 IAC 4.1-2-8 Qualified terminable interest property

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-2-4; IC 6-4.1-3-7

Sec. 8. (a) An interest in property held at the death of a surviving spouse, which was the subject of a previous exemption under IC 6-4.1-3-7, is reportable and taxable in the surviving spouse's estate. The property interest is valued at its full fair market value on the appraisal date established under 45 IAC 4.1-5-2.

(b) A transfer by gift of an interest in property, which was the subject of a previous exemption under IC 6-4.1-3-7, is reportable and taxable if such transfer was made in contemplation of death. The transfer of the property interest is subject to section 6 of this rule. *(Department of State Revenue; 45 IAC 4.1-2-8; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2025)*

45 IAC 4.1-2-9 Joint ownership with rights of survivorship

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-2-5; IC 29-2-14-3

Sec. 9. (a) The inheritance tax applies to the exercise of the rights of survivorship upon the death of one (1) joint tenant of property held or deposited in joint names with rights of survivorship. Except to the extent that contribution can be shown by the surviving joint owner, the tax is imposed on the total value of the property.

(b) If two (2) or more joint tenants die simultaneously, the jointly held property shall be distributed under IC 29-2-14-3, for inheritance tax purposes, unless a different distribution is shown to be appropriate.

(c) If it is shown that a joint bank account was established for the convenience of the decedent and that the rights of survivorship were not intended, the joint bank account shall pass pursuant to will or the laws of intestate succession.

(d) Jointly owned bonds issued by a federal, state, or local governmental unit are subject to the inheritance tax unless exempted from the inheritance tax by statute. *(Department of State Revenue; 45 IAC 4.1-2-9; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2025)*

45 IAC 4.1-2-10 Transfer by deed of trust

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-2; IC 30-4-3-1; IC 30-4-3-28

Sec. 10. (a) The inheritance tax applies to a transfer of property under a deed of trust in which the transferor reserves:

(1) any interest; or

(2) any powers of revocation, alteration, or amendment which if exercised would cause the property to revert to the transferor.

(b) The inheritance tax does not apply to a transfer of property under a deed of trust under the following circumstances:

(1) The property is realty located outside of Indiana.

(2) The property is realty located within Indiana that was transferred to an irrevocable trust during the decedent's lifetime but not transferred:

(A) in contemplation of death; or

(B) with a retained interest in the trust held by the decedent.

(c) As used in subsection (b), "retained interest" means the possession of some right in or to the trust property and includes the following:

(1) The right to receive income from the trust.

(2) The right to control or use the trust property.

(3) The right to direct payment of the trust income.

(4) The right to change the trust beneficiaries.

(5) The possibility of reverter of the trust property, even when very remote.

(d) As used in subsection (b), "irrevocable trust" means that the transferor has not reserved a power to revoke or modify the trust as provided under IC 30-4-3-1 or IC 30-4-3-28.

(e) A transfer by trust is taxable to the beneficiaries of the trust and not to the trustee. The tax rate is determined by the relationship of the beneficiary to the transferor. *(Department of State Revenue; 45 IAC 4.1-2-10; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2025)*

Rule 3. Exemptions and Deductions

45 IAC 4.1-3-1 Charitable exemptions

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-3-1

Sec. 1. (a) If a transfer of property qualifies as a deduction from the value of the federal gross estate under Section 2055(a) of the Internal Revenue Code, it will be exempt from the inheritance tax.

(b) A transferee claiming the exemption provided by subsection (a) has the burden of proof, and any ambiguity will be strictly construed against the transferee.

(c) The fact that the benefits flowing from an organization are limited to a particular group or a limited number of people does not void the exemption provided by subsection (a). For example, a transfer to a masonic lodge for the purpose of constructing a temple for the lodge is exempt from the inheritance tax. *(Department of State Revenue; 45 IAC 4.1-3-1; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2026)*

45 IAC 4.1-3-2 Cemetery association

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-3-1.5

Sec. 2. (a) Except as provided otherwise in this section, a transfer to a cemetery association is exempt from the inheritance tax if the property transferred is used for cemetery purposes.

(b) As used in this section, "cemetery" means any land or structure in Indiana dedicated to and used, or intended to be used, for the interment of human remains.

(c) As used in this section, "cemetery purpose" means any and all things requisite or necessary for or incident or convenient to the establishment, maintenance, management, operation, improvement, and conduct of a cemetery, the preparation for interment and the interment of the human dead, and the care, preservation, and embellishment of cemetery property.

(d) A transfer designated for a private purpose and not for public or general cemetery purposes is not exempt from the inheritance tax. For example, a transfer designated for the perpetual care of an individual plot is not exempt from the inheritance tax.

(e) A transfer designated for exempt and nonexempt purposes is subject to the inheritance tax unless the provisions creating the purposes are severable. *(Department of State Revenue; 45 IAC 4.1-3-2; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2026)*

45 IAC 4.1-3-3 Life insurance proceeds

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-3-6

Sec. 3. (a) Except as provided otherwise in this section, a transfer of proceeds from insurance on the life of a decedent payable either directly to or in trust for the use of any person is exempt from the inheritance tax.

(b) As used in this section, "proceeds" means the amount payable under a contract of insurance in one (1) sum and includes dividends and the cash surrender value payable under a whole life insurance policy.

(c) A transfer of proceeds from insurance on the life of a decedent payable to the decedent's estate or in any other manner that would subject the proceeds to distribution as a part of the decedent's estate and subject to claims against the decedent's estate is subject to the inheritance tax.

(d) As used in this section, "insurance on the life of a decedent" means a contract in which the risk insured against is the death of a particular person; upon which event, if it occurs under the terms of the contract, the insurer agrees to pay a stipulated sum to the beneficiary of the contract.

(e) Proceeds payable from a contract described in subsection (c) are not exempt from the inheritance tax if the risk factor for payment by the insurance company does not exist or has ceased to exist. The following contracts are examples in which the risk for the insurance company has terminated:

(1) An endowment policy that has matured.

(2) An annuity contract in which the company agrees to pay back the money deposited plus earnings less loading expenses.

(3) A combination annuity life insurance contract where the amount paid in or deposited is available to the insured during the insured's lifetime.

(f) The cash surrender value, on the decedent's date of death, of a policy owned by a decedent on the life of another is subject to the inheritance tax.

(g) Company-paid death benefits are treated in the same manner as any other transfers. For example, the payment of death benefits that are not life insurance proceeds are not exempt under subsection (a). However, the payment of life insurance proceeds through a retirement plan in which the plan trustee acts only as a conduit will not change the tax status of the insurance proceeds.

(h) The lump sum death benefits under the Railroad Retirement Act and the Social Security Act are not subject to the inheritance tax. *(Department of State Revenue; 45 IAC 4.1-3-3; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2026)*

45 IAC 4.1-3-4 Annuity payments

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-3-6.5

Sec. 4. (a) Except as provided in subsection (b), the value of an annuity or other payment receivable by a beneficiary by reason of surviving the decedent, under any form of contract or agreement (other than an insurance policy on the life of the decedent) is subject to the inheritance tax if the contract or agreement provides that an annuity or other payment is payable to the decedent or that the decedent possesses the right to receive such annuity or payment, either alone or in conjunction with another for the decedent's life or for any period not ascertainable without reference to the decedent's death or for any period which does not in fact end before the decedent's death.

(b) The value of an annuity or other payment described in subsection (a) is exempt from the inheritance tax only to the extent that it is excluded from the decedent's federal gross estate under Section 2039 of the Internal Revenue Code. Therefore, the exemption does not apply to that part of the value of an annuity or other payment described in this section as is proportionate to that part of the purchase price of such contract or agreement contributed by the decedent. As used in this subsection, "contributed by the decedent" includes any contribution by the decedent's employer or former employer if made by reason of the decedent's employment. *(Department of State Revenue; 45 IAC 4.1-3-4; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2027)*

45 IAC 4.1-3-5 Transfers to a surviving spouse

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-2-4; IC 6-4.1-3-7

Sec. 5. (a) A property interest which a decedent transfers to a surviving spouse is exempt from the inheritance tax. This exemption includes an interest which qualifies for the federal marital deduction under Section 2056(b)(5) or 2056(b)(6) of the Internal Revenue Code.

(b) The exemption provided by subsection (a) includes the total value of a property interest in which the surviving spouse has a qualifying income interest for life as defined in Section 2056(b)(7) of the Internal Revenue Code if the following conditions are met:

(1) An election is made to treat the transfer as qualified terminable interest property (QTIP).

(2) The election is made for all or a percentage of the qualified property and it specifically states which property is being included in the election.

(3) The election must be in writing, signed by a person authorized to make the election, and attached to the original Indiana inheritance tax return at the time it is filed.

(4) The election must be in form and content substantially as follows:

Pursuant to IC 6-4.1-3-7, an election is hereby made to treat the following property passing from the decedent in which the surviving spouse has a qualifying income interest for life as a property interest which a decedent transfers to the decedent's surviving spouse:

Qualified Property	Percentage
_____	_____
_____	_____

It is understood that this QTIP election is irrevocable and cannot be reversed.

Signature _____
Title _____

(c) A QTIP election is irrevocable and cannot be made on an amended inheritance tax return. Also, an election for federal estate tax purposes does not constitute an election for Indiana inheritance tax purposes.

(d) An inheritance tax return shall be filed when a QTIP election is made even though it would not otherwise have been required.

(e) The failure to comply with subsection (b) as to any property that would qualify under Section 2056(b)(7) of the Internal Revenue Code means that an irrevocable election has been made not to treat the transfer as a QTIP transfer.

(f) A transfer that is exempt from the inheritance tax in a decedent's estate due to a QTIP election is subject to 45 IAC 4.1-2-8.

(Department of State Revenue; 45 IAC 4.1-3-5; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2027)

45 IAC 4.1-3-6 Personal exemptions

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-1-3; IC 6-4.1-3

Sec. 6. (a) A transferee is entitled to a personal exemption, the amount of which depends upon the relationship of the transferee to the decedent.

(b) The personal exemption is deducted from the portion of the property interest transferred which is taxable at the highest rate of tax. In other words, the personal exemption is subtracted first and then the rates are applied to the residuary amount.

(c) A transferee is entitled to the following personal exemption:

(1) Ten thousand dollars ($10,000) if the transferee is a child of the decedent and less than twenty-one (21) years of age at the time of the decedent's death.

(2) Five thousand dollars ($5,000) if the transferee is a parent of the decedent or a child of the decedent and at least twenty-one (21) years of age at the time of the decedent's death.

(3) Two thousand dollars ($2,000) if the transferee is a lineal ancestor or lineal descendant of the decedent and doesn't qualify under subdivision (1) or (2).

(4) Five hundred dollars ($500) if the transferee is a:

(A) brother or sister of the decedent;

(B) descendant of a brother or sister of the decedent; or

(C) spouse, widow, or widower of a child of the decedent.

(5) One hundred dollars ($100) if the transferee does not qualify under any other subdivision of this subsection.

(Department of State Revenue; 45 IAC 4.1-3-6; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2028)

45 IAC 4.1-3-7 Debt deductions

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-3-13; IC 29-1-14-1

Sec. 7. (a) A debt of a resident decedent is deductible for inheritance tax purposes if it is a lawful claim against the decedent's resident estate. As used in this subsection, "lawful claim against the decedent's resident estate" means a claim allowed or allowable under IC 29-1-14.

(b) A debt is deductible only to the extent that it is actually paid after the date of death. The following are examples of this limitation:

(1) An unliquidated claim that is compromised for a sum less than the full amount claimed is limited to the compromised amount.

(2) Medical expenses of the decedent's last illness that are partially or fully reimbursed under an insurance plan are not deductible to the extent reimbursed.

(3) If a claim for an unsecured note is not filed as required by IC 29-1-14-1 but the note is partially or totally renewed and not paid, it is not deductible.

(4) A joint obligation to the extent it is subject to contribution from a co-obligor is not deductible. This limitation applies even though the full amount is paid by the estate and regardless whether such contribution is pursued by the estate.

(c) The following are examples of debts that are not deductible even though paid by the estate:

(1) A debt relating to property which is not included in the decedent's taxable estate.

(2) A debt upon which the statute of limitations had run at the date of the decedent's death.

(3) A debt which is, or can be, paid by proceeds from a credit life insurance policy.

(d) A secured claim is deductible only to the extent of its security if it is not filed under IC 29-1-14-1. *(Department of State Revenue; 45 IAC 4.1-3-7; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2028)*

45 IAC 4.1-3-8 Tax deductions

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-3-13

Sec. 8. (a) A tax on the decedent's property which is located in Indiana or has a legal situs in Indiana is deductible if such property is subject to the inheritance tax and the tax is due and unpaid at the time of the decedent's death.

(b) The following are examples of taxes that are deductible or not deductible depending upon the circumstances:

(1) Taxes on property passing to a surviving spouse are not deductible to the extent such property passes to the surviving spouse.

(2) Taxes on property in which the decedent held a life estate as a devisee are not deductible.

(3) Taxes imposed on a resident decedent's income to date of death are deductible if the taxes were unpaid at the time of the decedent's death.

(4) Income taxes on income earned during the administration of a decedent's estate are not deductible. Also, such taxes are not deductible as an expense of administration.

(5) Inheritance, estate, or transfer taxes, other than the federal estate tax, paid or payable to another jurisdiction on intangible personal property are deductible if such property is subject to the Indiana inheritance tax. Interest on late payment of these taxes is not deductible as a tax.

(6) The federal estate tax is not deductible. Also, interest payments due on deferred federal estate taxes are not deductible as taxes.

(7) The federal gift tax is not deductible unless the property on which it is determined is subject to the Indiana inheritance tax and such tax is a legal obligation of the decedent's and remains unpaid at the time of the decedent's death.

(Department of State Revenue; 45 IAC 4.1-3-8; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2028)

45 IAC 4.1-3-9 Mortgage deduction

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-3-13

Sec. 9. (a) Except as otherwise provided in this section, a mortgage or special assessment is deductible if it was, at the time of the decedent's death, a lien on Indiana real property owned by the decedent and subject to the inheritance tax.

(b) The deduction is limited to the extent of the decedent's ownership interest in the property. In other words, if the decedent's ownership interest in the property is fifty percent (50%), the deduction is limited to fifty percent (50%) of the mortgage.

(c) If the fair market value is less than the amount of the mortgage or special assessment, the deduction is limited to the fair market value of the property or to the extent of the decedent's interest in the fair market value of the property, whichever is less.

(d) A mortgage or special assessment is not deductible to the extent that it is, or can be, paid by proceeds from a credit life insurance policy. *(Department of State Revenue; 45 IAC 4.1-3-9; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2029)*

45 IAC 4.1-3-10 Funeral expenses deduction

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-3-13

Sec. 10. (a) Except as provided otherwise in this section, a resident decedent's funeral expenses are deductible in full.

(b) The amounts expended must be reasonable and paid after the date of the decedent's death. Amounts used to purchase the following items or similar items are not funeral expenses and therefore not deductible:

(1) Flowers.

(2) Lodging and meals for funeral guests.

(3) Any expenses necessary for a person to attend the funeral.

(c) An amount, not to exceed one thousand dollars ($1,000), paid for a memorial for the decedent is deductible. An individual

mausoleum is a memorial and thus subject to this limitation. However, a crypt is the same as a grave and therefore deductible at its full cost. *(Department of State Revenue; 45 IAC 4.1-3-10; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2029)*

45 IAC 4.1-3-11 Deduction for administrative expenses

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-3-13; IC 29-1-15

Sec. 11. (a) Reasonable expenses incurred in administering property subject to the inheritance tax may be deducted from the value of such property.

(b) As used in this section, "reasonable expenses" means expenditures that are actually and necessarily incurred to effect the settlement of the estate and the transfer of property of the estate to an individual transferee or to a trustee. The term does not include expenditures for the individual benefit of a transferee such as the expense of litigation by a transferee as an individual or by claimants against the estate. Except as provided in subsection (f), the term includes the expense of preparing the fiduciary income tax return.

(c) Expenses incurred in selling property are reasonable expenses only when the sale is authorized under IC 29-1-15.

(d) Expenses incurred in operating a business owned by the decedent are not reasonable expenses even though indirectly incurred to preserve the value of the business.

(e) Interest incurred because of the late payment of taxes is not a reasonable expense and therefore not deductible.

(f) Expenses that are deducted, or will be deducted, against the estate's fiduciary income are not reasonable expenses for purposes of subsection (a).

(g) Property given or paid, by way of compromise or otherwise, in a will contest or threatened will contest is not deductible as an expense of administration. *(Department of State Revenue; 45 IAC 4.1-3-11; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2029)*

45 IAC 4.1-3-12 Deductions against nonprobate property not transferred by a trust agreement

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-3-14; IC 29-1-4-1

Sec. 12. (a) Except as otherwise provided in this section, the following items, and no others, may be deducted from the value of nonprobate property transferred by a resident decedent:

(1) The decedent's debts as authorized under section 7 of this rule.

(2) Inheritance, estate, or transfer taxes, other than the federal estate tax, paid or payable to another jurisdiction on intangible personal property subject to the Indiana inheritance tax.

(3) The mortgage deduction as authorized under section 9 of this rule and all other valid liens against the property.

(4) The funeral expenses deduction as authorized under section 10 of this rule.

(5) The deduction for administrative expenses as authorized under section 11 of this rule.

(6) The balance of any allowance provided under IC 29-1-4-1 not otherwise used as a deduction against a taxable transfer of the decedent's property.

(b) The deductions provided under subsection (a)(1) through (a)(5) are limited to the amount actually expended by the transferee of the nonprobate property.

(c) The limitations provided under this section do not apply to nonprobate property transferred under a trust agreement. *(Department of State Revenue; 45 IAC 4.1-3-12; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2029)*

45 IAC 4.1-3-13 Deductions allowable in estates of nonresidents

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-3-15

Sec. 13. The following items, and no others, are deductible from the value of a property interest transferred by a nonresident decedent:

(1) The tax deductions as authorized under section 8 of this rule.

(2) The deduction for administrative expenses as authorized under section 11 of this rule.

(3) Valid liens against the property transferred.

(4) Valid claims against the decedent's domiciliary estate which will not be paid by the domiciliary estate because it is exhausted.

(Department of State Revenue; 45 IAC 4.1-3-13; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2030)

Rule 4. Returns

45 IAC 4.1-4-1 Inheritance tax return

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-1-2; IC 6-4.1-4; IC 6-4.1-5-1.5; IC 6-4.1-5-8; IC 6-4.1-12-1

Sec. 1. (a) Except as provided in subsection (b), an inheritance tax return is required to be filed within twelve (12) months after the date of the decedent's death in the following manner:

(1) With the appropriate probate court if the decedent is a resident of Indiana.

(2) With the department if the decedent is a nonresident of Indiana.

(b) An inheritance tax return is not required to be filed under the following conditions:

(1) The total fair market value of the property interests transferred to each transferee is equal to or less than the transferee's personal exemption under 45 IAC 4.1-3-6.

(2) The probate court enters an order stating that no inheritance tax is due under IC 6-4.1-5-8.

(3) The entire fair market value of the decedent's estate is being transferred to a surviving spouse and a qualified terminable interest property election has not been made under 45 IAC 4.1-3-5.

(c) A copy of the inheritance tax return for a resident decedent should be filed with the county assessor's office at the same time it is filed with the court. Otherwise, the court must refer a copy of the return to the county inheritance tax appraiser within ten (10) days after it is received.

(d) The fair market value of a property interest shall be determined on the appraisal date prescribed under IC 6-4.1-5-1.5.

(Department of State Revenue; 45 IAC 4.1-4-1; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2030; errata filed Jun 17, 1994, 4:30 p.m.: 17 IR 2656)

45 IAC 4.1-4-2 Extension of filing time

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-4-2

Sec. 2. (a) The appropriate probate court, or the department in the case of a nonresident decedent, may extend the period for filing the inheritance tax return if it finds that the return cannot be filed when due because of an unavoidable delay.

(b) As used in this section, "unavoidable delay" means the delay is due to an event which could not have been foreseen and prevented by using ordinary diligence and resulting without negligence. In other words, a cause growing out of conditions or circumstances that prevented a party or counsel from doing something that, except therefor, would have been done. The term does not include mistakes or errors of judgment growing out of misconstruction or understanding of the law, or the failure of a party or counsel through mistake to take advantage of a remedy which, if resorted to, would have prevented the cause of the delay.

(c) A subsequent extension may be granted if the person seeking the extension files a written motion which states the reason for the further delay in filing the return.

(d) An extension of time to file the inheritance tax return does not affect the due date for payment of the tax or the period during which a five percent (5%) discount may be taken for early payment of the tax. *(Department of State Revenue; 45 IAC 4.1-4-2; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2030)*

45 IAC 4.1-4-3 Attachments to the inheritance tax return

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-4-1; IC 6-4.1-4-7

Sec. 3. (a) The following documentation shall be attached to the inheritance tax return:

(1) A copy of the decedent's last will and testament.

(2) A copy of any trust instrument under which a property interest is transferred due to the death of the decedent.

(3) A copy of any antenuptial or postnuptial agreement under which a property interest is controlled at the death of one (1) of the parties.
(4) A copy of any divorce decree controlling the ownership of property and which has an effect upon the transfer of that property in the decedent's estate.
(5) Form 712 of the Internal Revenue Service, or a similar type form, properly prepared by the insurance company for all proceeds paid due to the death of the decedent.
(6) A formal appraisal, by a licensed appraiser, setting forth the fair market value of all tangible property reported on the return. All such appraisals obtained shall be attached to the return.
(7) The deed for real estate held other than in the decedent's name alone, and the deed for real estate in which the decedent is the grantor.
(8) Statements of the net earnings or operating results and balance sheets for each of the five (5) full years immediately preceding the valuation date for the following property when included in the taxable estate:
(A) Shares of a corporation which are not publicly traded.
(B) An interest in a partnership.
(C) An interest in an unincorporated business.

(b) All other documentation, such as a consent to transfer, a buy-sell agreement, or a claim verification, necessary to clarify a given situation shall be submitted to the department when requested. *(Department of State Revenue; 45 IAC 4.1-4-3; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2031)*

45 IAC 4.1-4-4 Federal estate tax return

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-4-8

Sec. 4. (a) A copy of the federal estate tax return, any amendments thereto, and all its attachments shall be filed with the department at the same time that the return or amendment is filed with the Internal Revenue Service.

(b) A copy of a final determination of federal estate tax, including all documentation necessary to determine how the tax was calculated, shall be filed with the department within thirty (30) days after it is received.

(c) As used in this section, "final determination of federal estate tax" means any notice of a redetermination of the tax due issued by the Internal Revenue Service or a federal court, whether or not agreed to by the estate. The term includes a redetermination of the tax as reported on the original federal estate tax return, as reported later on an amended return, or as previously redetermined by the Internal Revenue Service or a federal court.

(d) A final determination of federal estate tax that is the result of a court decision or compromise of the tax due shall be presumed to consist of property subject to the inheritance tax. All documentation leading up to either a court decision or a compromise is considered a part of the final determination and required to be filed with the department under subsection (b). *(Department of State Revenue; 45 IAC 4.1-4-4; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2031)*

Rule 5. Valuation of Property Interests

45 IAC 4.1-5-1 "Fair market value" defined

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-5

Sec. 1. (a) Except as otherwise provided in this rule, "fair market value" means the price at which a willing buyer and a willing seller would arrive, after negotiation for a sale, where neither is acting under compulsion and both have a reasonable knowledge of all the facts affecting value.

(b) The term does not include a price established by a sale where the parties exchanging the property are not dealing at arm's length.

(c) Except as provided in subsections (d) and (e), the fair market value of a property interest for Indiana inheritance tax purposes is presumed to be the same as the value finally determined for federal estate tax purposes. However, the presumption is rebuttable.

(d) A property interest value determined under Section 2032A of the Internal Revenue Code shall not be used for Indiana

inheritance tax purposes.

(e) Each future, contingent, defeasible, or life interest in property and each annuity shall be appraised by using the rules, methods, standards of mortality, and actuarial tables used by the Internal Revenue Service on October 1, 1988, for federal estate tax purposes. *(Department of State Revenue; 45 IAC 4.1-5-1; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2031)*

45 IAC 4.1-5-2 Appraisal date

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-5-1.5; IC 6-4.1-6-1

Sec. 2. (a) Except as provided in subsection (b), the appraisal date for determining the fair market value of each property interest transferred by a decedent is the date used to value the property interest for federal estate tax purposes.

(b) If a federal estate tax return is not filed, the appraisal date is the date of the decedent's death. *(Department of State Revenue; 45 IAC 4.1-5-2; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2032)*

45 IAC 4.1-5-3 Actively traded stocks or bonds

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-5

Sec. 3. (a) Except as otherwise provided in this section, the fair market value of actively traded stocks or bonds shall be determined by using one (1) of the following methods:

(1) By calculating the mean between the highest and lowest quoted selling prices on the appraisal date.

(2) If there were not any sales on the appraisal date, by calculating a weighted average of the means between the highest and lowest selling prices on the nearest date before and the nearest date after the appraisal date. These sales must be within a reasonable period before and after the appraisal date. The average shall be weighted inversely by the respective number of trading days between the selling date and the appraisal date.

(3) If there were not any sales within a reasonable period before and after the appraisal date, by calculating the mean between the bona fide bid and asked prices on the appraisal date.

(4) If there were not any bona fide bid and asked prices on the appraisal date, by calculating a weighted average of the means between the bona fide bid and asked prices on the nearest trading date before and the nearest trading date after the appraisal date, if both such nearest trading dates are within a reasonable period. The average shall be weighted in the same manner as in subdivision (2).

The following is an example of the calculation necessary under subdivisions (2) and (4). Assume that the sales of stock nearest the appraisal date occurred two (2) trading days before with a mean sale price of twenty dollars ($20) and three (3) trading days after with a mean sale price of twenty-five dollars ($25). The fair market value per share of stock would be twenty-two dollars ($22) and would be calculated as follows:

$$\frac{20 \times 3 + 25 \times 2}{5} = \frac{60 + 50}{5} = \frac{110}{5} = 22$$

(b) As used in this section, "reasonable period" means six (6) months or less.

(c) The fair market value of a share of an open-end investment company, commonly known as a mutual fund, shall be the bid price at which the company is required to redeem an outstanding share.

(d) The fair market value of a United States treasury bond, commonly known as a flower bond, or any similar type bond, shall be valued at the redemption price accepted by the Internal Revenue Service in payment of the federal estate tax. *(Department of State Revenue; 45 IAC 4.1-5-3; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2032)*

45 IAC 4.1-5-4 Closely held corporations, partnership interests, and unincorporated businesses

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-5

Sec. 4. (a) Unless there is a sale in part or in total during the administration of the estate, the fair market value of a closely

held corporation, a partnership interest, or an unincorporated business shall be determined by calculating the operational worth of the business.

(b) The preferred method for determining the operational worth of a business is the capitalization of earnings method. Therefore, this method shall be used where possible. The calculation is accomplished by dividing the average earnings yield for the type of business being valued into the actual earnings of the specific business. For example, if the actual earnings of the business in the last full taxable year before the decedent's death is two dollars ($2) per share and the average earnings yield for this type of business is determined to be eight percent (8%), the value of each share would be twenty-five dollars ($25), calculated by dividing the earnings per share by the average earnings yield (2/.08=25). The most reliable source for determining the average earnings yield of the price earnings ratio is comparable businesses for which these figures can be established.

(c) If it is not reasonable to use the capitalization of earnings method, then any other method that is reasonable may be used to establish the operational worth of the business. The department will look at the following factors in attempting to establish the operational worth of a business:

(1) The nature of the business.

(2) The economic outlook and condition of the industry.

(3) The earning capacity of the business.

(4) The fair market value of the assets of the business, including good will.

(d) Proceeds from an insurance policy on the life of the decedent payable to a business described in subsection (a) shall be included as an asset of the business for purposes of establishing the operational worth of that business. *(Department of State Revenue; 45 IAC 4.1-5-4; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2032)*

45 IAC 4.1-5-5 Interest and dividends

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-5

Sec. 5. (a) The fair market value of an interest bearing instrument or account such as a savings account, certificate of deposit, savings bond, or contract of sale is the face or principal amount plus accrued and unpaid interest from the date interest was last credited or paid to the appraisal date.

(b) The fair market value of a share of stock includes a declared but unpaid dividend if the date of record occurs before the appraisal date. *(Department of State Revenue; 45 IAC 4.1-5-5; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2033)*

45 IAC 4.1-5-6 Mineral interests

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-5

Sec. 6. (a) Except as otherwise provided in subsection (c), the fair market value of a royalty interest or an overriding royalty interest shall be the sum of the total royalty payments received for the three (3) full years prior to the appraisal date.

(b) Except as otherwise provided in subsection (c), the fair market value of a working interest shall be the sum of the net income plus depreciation and depletion allowances for the three (3) full years prior to the appraisal date.

(c) The valuations determined under subsections (a) and (b) may be adjusted if substantial fluctuations in the market price occurred during the three (3) full years prior to the appraisal date.

(d) The fair market value of a mineral interest in real estate shall be determined by a formal appraisal prepared by an expert in the area such as a geologist. *(Department of State Revenue; 45 IAC 4.1-5-6; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2033)*

45 IAC 4.1-5-7 Buy and sell agreements

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-5

Sec. 7. (a) An inter vivos buy and sell agreement fixing the price of a property interest is not conclusive for inheritance tax purposes regardless of its effect upon the decedent or the decedent's estate.

(b) If a buy and sell agreement is not a bona fide transaction to sell the property interest for adequate and full consideration, the property shall be valued at its fair market value and no effect will be given to the agreement for purposes of valuation.

(Department of State Revenue; 45 IAC 4.1-5-7; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2033)

45 IAC 4.1-5-8 Obligations owed a decedent

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-5

Sec. 8. (a) Except as otherwise provided in subsection (b), the fair market value of a note, an account receivable, an installment obligation, or any other obligation owed a decedent shall be the balance due on the appraisal date.

(b) The value established under subsection (a) may be reduced if valid and convincing evidence is submitted to support any of the following allegations:

(1) The debtor's lack of ability to pay.

(2) The possible uncollectibility of the debt.

(3) Any other factor that would cause a decrease in value.

(Department of State Revenue; 45 IAC 4.1-5-8; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2033)

45 IAC 4.1-5-9 Commissions, copyrights, patents, or royalties

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-5

Sec. 9. The fair market value of commissions, copyrights, patents, royalties, and similar intangible assets shall be determined by calculating the present value of potential future earnings. *(Department of State Revenue; 45 IAC 4.1-5-9; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2033)*

45 IAC 4.1-5-10 Annuities, life estates, or remainders

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-5; IC 6-4.1-6

Sec. 10. (a) The fair market value of an annuity and a future, contingent, defeasible, or life interest in a property shall be determined by using the rules, methods, standards of mortality, and actuarial tables used by the Internal Revenue Service on October 1, 1988, for federal estate tax purposes.

(b) The fair market value of a property interest shall not be affected because it may be divested by an act or omission of the transferee. Under appropriate circumstances, the death of a transferee shall be considered an act causing divestiture. An example would be a vested remainder interest subject to being divested such as where the principal of a trust is payable to a beneficiary upon reaching a certain age unless the beneficiary dies prior to attaining such age, in which case the principal is payable to a different beneficiary. *(Department of State Revenue; 45 IAC 4.1-5-10; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2033)*

45 IAC 4.1-5-11 Appraisal of a resident decedent's property

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-5; IC 6-4.1-12-2

Sec. 11. (a) The county assessor of each county shall serve as the county inheritance tax appraiser.

(b) In place of the county assessor, the appropriate probate court shall appoint a competent and qualified resident of the county to act as the county inheritance tax appraiser if the county assessor is:

(1) beneficially interested as an heir of the decedent's estate;

(2) the personal representative of the decedent's estate; or

(3) related to the decedent or a beneficiary of the decedent's estate within the third degree of consanguinity or affinity.

(c) A person who is appointed to act as the county inheritance tax appraiser under subsection (b) shall be paid a fee set by the court and approved by the department. *(Department of State Revenue; 45 IAC 4.1-5-11; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2034)*

45 IAC 4.1-5-12 Appraisal of a nonresident decedent's property

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-9-12

Sec. 12. (a) The department may petition the Marion Superior Court, Probate Division for appointment of a resident or special administrator to appraise a nonresident decedent's property.

(b) If the department files a petition under subsection (a), it must show:

(1) that the property interest transferred by the decedent is a taxable transfer;

(2) that the property interest has not been appraised in the manner required by this rule or IC 6-4.1; and

(3) that the property involved has an actual situs in Indiana.

(c) A resident or special administrator appointed by the court under this section has the same powers and duties as a general administrator. *(Department of State Revenue; 45 IAC 4.1-5-12; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2034)*

Rule 6. Review of Inheritance Tax Determination

45 IAC 4.1-6-1 Time limitations

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-7

Sec. 1. (a) A redetermination of inheritance tax with respect to a resident decedent's estate may be obtained under the following circumstances:

(1) By filing a petition for rehearing within one hundred twenty (120) days after the probate court enters its original order.

(2) By filing a petition for reappraisal of a property interest within one (1) year after the probate court enters its original order.

(3) By filing a petition for reappraisal of a property interest within two (2) years after the probate court enters its original order if the original appraisal of a property interest was fraudulently or erroneously made.

(4) By filing a petition for redetermination of tax within sixty (60) days after a copy of the final determination of federal estate tax is filed with the department.

(b) A redetermination of inheritance tax with respect to a nonresident decedent's estate may be obtained under the following circumstances:

(1) By filing a complaint against the department, within ninety (90) days after the department mails its notice of the inheritance tax due, with:

(A) the probate court of the Indiana county in which administration of the decedent's estate is pending; or

(B) the probate court of any county in which any of the decedent's property was located at the time of death, if no administration of the decedent's estate is pending in Indiana.

(2) By filing a petition for redetermination of tax, with the probate court indicated in subdivision (1), within sixty (60) days after a copy of the final determination of federal estate tax is filed with the department.

(Department of State Revenue; 45 IAC 4.1-6-1; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2034)

45 IAC 4.1-6-2 Appeal to probate court

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-7

Sec. 2. An appeal to a probate court to redetermine the inheritance tax due may be made for the following matters:

(1) All issues on a petition for rehearing filed under IC 6-4.1-7-1 or on a complaint filed under IC 6-4.1-7-5.

(2) A reappraisal of a property interest on a petition for reappraisal filed under IC 6-4.1-7-2.

(3) Modifications based on:

(A) a change in the fair market value of the assets of the decedent's estate; or

(B) a change in deductions from the assets of the decedent's estate;

on a petition for redetermination filed under IC 6-4.1-7-6.

(Department of State Revenue; 45 IAC 4.1-6-2; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2799; errata, 18 IR 103)

Rule 7. Inheritance Tax Lien

45 IAC 4.1-7-1 Attachment of lien

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-6-6; IC 6-4.1-8-1; IC 29-1-15

Sec. 1. (a) The inheritance tax imposed as a result of a decedent's death is a lien on all property being transferred. The lien is automatic, and the department does not have to take any action to perfect the lien.

(b) Except as provided otherwise in IC 6-4.1-6-6(b), the inheritance tax accrues and the lien attaches at the time of the decedent's death.

(c) If property is sold, mortgaged, leased, or exchanged during the administration of the estate, under IC 29-1-15, the lien attaches to:

(1) the proceeds from the sale;
(2) the proceeds from the mortgage;
(3) the proceeds from the lease; or
(4) the property received in exchange.

(Department of State Revenue; 45 IAC 4.1-7-1; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2034)

45 IAC 4.1-7-2 Termination of lien

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-8-1; IC 29-1-15

Sec. 2. (a) The inheritance tax lien shall terminate upon the happening of any of the following events:

(1) The inheritance tax is paid.
(2) Five (5) years pass after the date of the decedent's death.
(3) Property is sold, mortgaged, leased, or exchanged under IC 29-1-15 and the lien against the property is released under IC 29-1-15-20.

(b) Although the inheritance tax lien terminates under subsection (a)(3) as to the property sold, mortgaged, leased, or exchanged, it does not terminate in total but attaches to:

(1) the proceeds from the sale;
(2) the proceeds from the mortgage;
(3) the proceeds from the lease; or
(4) the property received in exchange.

However, the lien against the substitute property will terminate in total upon the happening of the events stated in subsection (a)(1) and (a)(2). *(Department of State Revenue; 45 IAC 4.1-7-2; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2035; errata filed Jun 17, 1994, 4:30 p.m.: 17 IR 2656)*

45 IAC 4.1-7-3 Liability for inheritance tax

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-8-1

Sec. 3. (a) The following persons are personally liable for the inheritance tax imposed as a result of a decedent's death:

(1) A transferee of the decedent's property.
(2) A personal representative of the decedent's estate.
(3) A trustee who has possession of or control over any of the decedent's property.

(b) The termination of the inheritance tax lien under section 2 of this rule does not have any effect on the personal liability established by subsection (a). In other words, the discharge of the lien is not an impediment to either the determination of the tax due or the collection of the tax due. *(Department of State Revenue; 45 IAC 4.1-7-3; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2035)*

Rule 8. Limitations on the Transfer of a Decedent's Property

45 IAC 4.1-8-1 Transfers to a surviving spouse

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-8-4; IC 6-4.1-8-4.6

Sec. 1. (a) A consent to transfer is not required on property transferred to a surviving spouse.

(b) Notice of the transfer is not required when a checking account is transferred to a surviving spouse. *(Department of State Revenue; 45 IAC 4.1-8-1; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2035)*

45 IAC 4.1-8-2 Transfer of a checking account

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-8-4; IC 6-4.1-8-4.6; IC 26-1-4-405

Sec. 2. (a) As used in this rule, "checking account" means an account that has as its primary purpose the writing of drafts drawn on a financial institution and payable on demand.

(b) A consent to transfer is not required on the transfer of a checking account.

(c) Except as otherwise provided in section 1 of this rule, notice of the transfer of a checking account in which a resident decedent had a legal interest shall be given to the department or to the county assessor simultaneously with the transfer of the account.

(d) The requirements of subsection (c) will be met if such notice is mailed to the correct address on the date of the transfer.

(e) A transferor is not in violation of this section if it pays or certifies a check under IC 26-1-4-405 prior to giving the notice required by subsection (c). *(Department of State Revenue; 45 IAC 4.1-8-2; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2035)*

45 IAC 4.1-8-3 Transfer to a surviving joint tenant

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-8-4

Sec. 3. (a) Except as otherwise provided in sections 1 and 2 of this rule, a consent to transfer from the department or the county assessor shall be obtained before property held jointly by a resident decedent and another may be transferred to a surviving joint tenant.

(b) To ensure that a transfer will not jeopardize the collection of the inheritance tax, a consent shall not exceed eighty percent (80%) of the property involved until the inheritance tax imposed with respect to the transfer has been paid. *(Department of State Revenue; 45 IAC 4.1-8-3; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2035)*

45 IAC 4.1-8-4 Transfer of insurance proceeds

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-8-4; IC 6-4.1-8-5

Sec. 4. (a) A consent to transfer is not required on a transfer of life insurance proceeds.

(b) Except as otherwise provided in subsection (c), notice is not required to be given on a payment of life insurance proceeds.

(c) Notice of a transfer of life insurance proceeds which are paid to a resident decedent's estate shall be given to the department.

(d) The notice required by subsection (c) shall be given within ten (10) days after the proceeds are paid to the estate. *(Department of State Revenue; 45 IAC 4.1-8-4; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2036)*

45 IAC 4.1-8-5 Transfers to a personal representative

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-8-4

Sec. 5. (a) Except as otherwise provided in sections 2 and 4 of this rule, a consent to transfer shall be obtained from the department or county assessor before a resident decedent's personal property is transferred to a personal representative of the decedent's estate.

(b) Because a transfer of property to a personal representative should not jeopardize the collection of the inheritance tax, the consent may be given for the transfer of one hundred percent (100%) of the property involved. *(Department of State Revenue; 45 IAC 4.1-8-5; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2036)*

45 IAC 4.1-8-6 Transfers from a personal representative or trustee

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-8-2; IC 6-4.1-8-4

Sec. 6. (a) A personal representative of a decedent's estate or a trustee of a decedent's property may not transfer or deliver the decedent's property to a transferee until the inheritance tax imposed with respect to the transfer has been paid.

(b) If money is the property transferred and it is transferred to a transferee for a limited period of time, the personal representative or trustee shall retain the total tax imposed on all interests in the money.

(c) If property other than money is transferred to a transferee for a limited period of time, each transferee of an interest in the property shall pay to the personal representative or the trustee the inheritance tax imposed on the transferee's interest.

(d) Except as otherwise provided in this rule, if a decedent is the trustee of property held in trust which will be transferred due to the death of the decedent, a consent to transfer shall be obtained before the trust property is transferred to a successor trustee or to a transferee. *(Department of State Revenue; 45 IAC 4.1-8-6; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2036)*

45 IAC 4.1-8-7 Small estate affidavit

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-8; IC 29-1-8-1

Sec. 7. (a) Under appropriate circumstances, it is not necessary to administer a decedent's probate estate. In these situations, a decedent's probate property may be transferred by affidavit under IC 29-1-8-1.

(b) A transfer of property as provided in subsection (a) does not exempt a transferor from the provisions of this rule or IC 6-4.1-8. In other words, a consent to transfer shall be obtained or notice given under the appropriate circumstances. *(Department of State Revenue; 45 IAC 4.1-8-7; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2036)*

45 IAC 4.1-8-8 Nonresident decedent's property

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-8

Sec. 8. (a) A transfer of personal property belonging to a nonresident decedent is not subject to any restrictions.

(b) A safe deposit box of a nonresident decedent is not required to be inventoried. *(Department of State Revenue; 45 IAC 4.1-8-8; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2036)*

45 IAC 4.1-8-9 Safe deposit boxes

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-8-5; IC 6-4.1-8-6

Sec. 9. (a) Except as provided in subsection (e), a resident decedent's safe deposit box shall be examined and its contents listed by the department or county assessor before it is released by the person who has possession or control over it. The inventory shall include the contents of all sealed containers within the safe deposit box.

(b) A box in the name of a trust in which the decedent has a legal or equitable interest shall be inventoried. However, the following safe deposit boxes shall be inventoried only if it is known that the decedent has deposited personal property therein:

(1) A corporate box if the decedent is an officer.

(2) A partnership box if the decedent is a partner.

(3) A box on which the decedent is designated as a deputy.

(c) If a safe deposit box is required to be inventoried, reasonable notice of the time and place of the box opening must be given to the department or the county assessor. As used in this subsection, "reasonable notice" means ten (10) working days. However, the department or county assessor may agree to a shorter period of time if its schedule permits.

(d) An inventory of a safe deposit box prepared by the department or the county assessor is confidential and shall not be disclosed except for the purpose of determining and collecting the inheritance tax.

(e) Except as provided in subsection (f), subsection (a) does not apply to a safe deposit box held as joint tenants by spouses on the date of death of the first joint tenant. However, subsection (a) shall apply should the spouses die simultaneously or should the second joint tenant die before the first joint tenant's name is removed from the box.

(f) A safe deposit box held as joint tenants by spouses and a third party on the date of death of any of the joint tenants shall be inventoried. *(Department of State Revenue; 45 IAC 4.1-8-9; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2036)*

Rule 9. Payment and Collection of Inheritance Taxes

45 IAC 4.1-9-1 Due dates

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-6-6; IC 6-4.1-7-6; IC 6-4.1-9-1; IC 6-4.1-9-1.5

Sec. 1. (a) Except as otherwise provided in IC 6-4.1-6-6(b) and subsection (b), the inheritance tax is due eighteen (18) months after the date of the decedent's death.

(b) Any additional inheritance tax imposed because a petition for redetermination is filed under IC 6-4.1-7-6 is due thirty (30) days after a person liable for paying the inheritance tax receives notice of the final determination of federal estate tax. *(Department of State Revenue; 45 IAC 4.1-9-1; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2037)*

45 IAC 4.1-9-2 Discount for early payments

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-9-2

Sec. 2. (a) Payment of the inheritance tax within one (1) year of the decedent's date of death shall result in a five percent (5%) reduction of the inheritance tax due. If the inheritance tax due has not been determined, the payment may be made on an estimated basis to take advantage of the five percent (5%) reduction.

(b) The five percent (5%) reduction applies to the amount actually paid within the one (1) year period and not to any amount paid thereafter. A payment mailed by the day before the end of the one (1) year period, regardless of when received, is considered paid within the one (1) year period if not otherwise invalid. *(Department of State Revenue; 45 IAC 4.1-9-2; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2037)*

45 IAC 4.1-9-3 Interest on late payments

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-7-6; IC 6-4.1-9-1; IC 6-4.1-9-1.5

Sec. 3. (a) Except as otherwise provided in this section, if the inheritance tax is not paid on or before the due date established by section 1(a) of this rule, interest shall accrue on the delinquent portion of the tax at the rate of ten percent (10%) per year from the date of the decedent's death to the date of payment.

(b) If an unavoidable delay, such as necessary litigation, prevents the determination of the inheritance tax due, the interest rate imposed by subsection (a) may be reduced to six percent (6%) per year from the date of the decedent's death to the date of the order imposing the tax and reducing the rate of interest. The rate of interest shall be ten percent (10%) from the day after the date of the order imposing the tax and reducing the rate of interest to the date of payment.

(c) If additional inheritance tax is imposed because a petition for redetermination is filed under IC 6-4.1-7-6, and the tax is not paid on or before the due date established by section 1(b) of this rule, interest shall accrue on the delinquent portion of the tax at the rate of six percent (6%) per year from the due date to the date of payment.

(d) If a tax payment is mailed by the day before the due date established by section 1 of this rule, it is considered paid on the due date, regardless of when received, unless the payment is otherwise invalid. *(Department of State Revenue; 45 IAC 4.1-9-3; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2037)*

45 IAC 4.1-9-4 Payment of taxes

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-9

Sec. 4. (a) The inheritance tax imposed as a result of a resident decedent's death shall be paid to the county treasurer.

(b) The inheritance tax imposed as a result of a nonresident decedent's death shall be paid to the department.

(c) Additional taxes and any interest due thereon may be paid at any time without first obtaining a redetermination of the tax.

(d) If a partial payment is made when tax, interest, and penalty are due, the payment shall be applied to the penalty first, the interest second, and then to the principal amount of tax due.

(e) The county treasurer or the department, as the case may be, shall issue a receipt to the person paying the tax. A copy of the receipt issued by the county treasurer shall be sent to the department, and the department shall countersign the receipt and send it to the payor as proof of payment of the amount shown on the receipt. *(Department of State Revenue; 45 IAC 4.1-9-4; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2037)*

45 IAC 4.1-9-5 Collection of taxes

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1

Sec. 5. (a) An action to collect inheritance taxes due as a result of a resident decedent's death starts with the county treasurer. If the inheritance tax becomes delinquent, the county treasurer shall notify the county prosecuting attorney in writing of the nonpayment of the tax.

(b) After receiving the notice required in subsection (a), the county prosecuting attorney shall file with the appropriate probate court a motion to show cause why the tax has not been paid. If the probate court finds that the tax is due and that payment cannot otherwise be enforced under IC 6-4.1, it shall direct the prosecuting attorney to initiate an action in the name of the county to enforce payment of the tax.

(c) The action initiated under subsection (b) must be commenced within ten (10) years after the date of the order imposing the tax unless the court did not mail a copy of its determination to all persons interested in the decedent's estate, including the department and the county treasurer.

(d) An action to collect inheritance taxes due as a result of a nonresident decedent's death is at the discretion of the department. To start the action, the department must file a petition with the Marion Superior Court, Probate Division. The petition shall request the appointment of a resident or special administrator for the nonresident decedent's estate. If the department files a petition under this subsection, it must show:

(1) that the inheritance taxes have not been paid; and

(2) that it has been at least two (2) years since the decedent died.

(Department of State Revenue; 45 IAC 4.1-9-5; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2038)

45 IAC 4.1-9-6 Compromise of tax or interest due

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-9; IC 6-4.1-12-5

Sec. 6. (a) The department, with the advice and approval of the attorney general, may enter into a compromise agreement concerning the amount of inheritance tax, or interest charges on delinquent tax, to be collected.

(b) The compromise agreement may be entered into if the department and the attorney general believe that a substantial doubt exists in any of the following:

(1) The right to impose the tax under applicable Indiana law.

(2) The constitutionality, under either the Indiana or United States Constitution, of the imposition of the tax.

(3) The correct value of property transferred under a taxable transfer.

(4) The correct amount of tax due.

(5) The collectability of the tax.

(6) Whether the decedent was a resident or a nonresident of Indiana.

(c) The department may enter into a compromise agreement with the personal representative of a decedent's estate or with

a transferee.

(d) A compromise agreement is final and irrevocable as to the issue of the amount of inheritance tax to be collected unless:

(1) the amount of the tax agreed to by the parties is not paid; or

(2) the agreement was entered into fraudulently.

(Department of State Revenue; 45 IAC 4.1-9-6; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2038)

Rule 10. Refunds

45 IAC 4.1-10-1 Time limit for filing

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-10-1

Sec. 1. A claim for refund of inheritance tax or Indiana estate tax is not valid unless it is filed with the department within the later of:

(1) three (3) years after the date the tax is paid; or

(2) one (1) year after the date the tax is finally determined.

(Department of State Revenue; 45 IAC 4.1-10-1; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2038)

45 IAC 4.1-10-2 Interest on refunds

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-10-1

Sec. 2. A refund is payable with interest at the rate of six percent (6%) per year from the date the tax was paid to the date the refund is paid. *(Department of State Revenue; 45 IAC 4.1-10-2; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2038)*

45 IAC 4.1-10-3 Orders for refund

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-10-3

Sec. 3. (a) The department shall review each claim for refund and enter an order either approving, partially approving, or denying the claim for refund.

(b) A copy of the department's refund order shall be sent to the claimant within five (5) days after its determination.

(c) If the department either approves or partially approves a claim for refund, it shall also send a copy of its refund order to the following officials:

(1) The county treasurer when the refund applies to inheritance tax collected as a result of a resident decedent's death.

(2) The state treasurer when the refund applies to taxes collected by the department and not credited to a county.

(d) The county or state treasurer, as the case may be, shall pay a refund from money which has not otherwise been appropriated. *(Department of State Revenue; 45 IAC 4.1-10-3; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2039)*

45 IAC 4.1-10-4 Appeal of refund order

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-10-4; IC 6-4.1-10-5

Sec. 4. (a) An appeal of a refund order must be initiated within ninety (90) days after the date the department enters the order.

(b) To commence an appeal, a complaint in which the department is named as the defendant must be filed in one (1) of the following courts:

(1) The probate court of the county in which administration of the estate is pending, if the appeal involves either a resident or a nonresident decedent's estate and administration of the estate is pending in Indiana.

(2) The probate court of the county in which the decedent was domiciled at the time of the decedent's death, if the appeal involves a resident decedent's estate and no administration of the estate is pending in Indiana.

(3) The probate court of any county in which any of the decedent's property was located at the time of the decedent's death,

if the appeal involves a nonresident decedent's estate and no administration of the estate is pending in Indiana.

(c) When an appeal is initiated under subsection (b), the probate court determines if a refund is due and the amount. *(Department of State Revenue; 45 IAC 4.1-10-4; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2799)*

Rule 11. Indiana Estate Tax

45 IAC 4.1-11-1 Imposition of estate tax

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-11-1; IC 6-4.1-11-2

Sec. 1. (a) A tax to be known as the Indiana estate tax shall be imposed upon a decedent's estate.

(b) The amount of tax due is Indiana's proportionate share of the federal death tax credit (as defined in 45 IAC 4.1-1-9) less the Indiana inheritance tax actually paid as a result of the decedent's death. If the Indiana inheritance tax is the larger of the two (2) amounts, the Indiana estate tax is zero (0).

(c) For purposes of subsection (b), Indiana's proportionate share is determined by multiplying the federal death tax credit by the value of the decedent's Indiana gross estate over the value of the decedent's federal gross estate.

(d) For purposes of subsection (c), the decedent's Indiana gross estate equals the total fair market value on the appraisal date of all tangible property which had an actual situs in Indiana at the time of the decedent's death, plus, in the estate of a resident decedent, all intangible personal property wherever located. The property must also be included in the decedent's gross estate for federal estate tax purposes.

(e) For purposes of subsection (d), "Indiana gross estate" does not include property transferred under a deed of trust under the following circumstances:

(1) The property is realty located outside of Indiana.

(2) The property is realty located within Indiana that was transferred to an irrevocable trust during the decedent's lifetime but not transferred:

(A) in contemplation of death; or

(B) with a retained interest in the trust held by the decedent.

As used in this subsection, "irrevocable trust" and "retained interest" have the same meaning as found in 45 IAC 4.1-2-10.

(f) For purposes of subsection (c), the decedent's federal gross estate equals the total fair market value on the appraisal date of all property included in the decedent's gross estate for federal estate tax purposes.

(g) For purposes of subsections (d) and (e), the appraisal date is the date on which the property interest is valued for federal estate tax purposes. *(Department of State Revenue; 45 IAC 4.1-11-1; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2039)*

45 IAC 4.1-11-2 Due dates

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-11-3

Sec. 2. (a) Except as otherwise provided in subsection (b), the Indiana estate tax is due eighteen (18) months after the date of the decedent's death.

(b) Indiana estate tax resulting from a final determination of federal estate tax is due one (1) month after notice of such determination is given to the person liable for the tax, if such date is later than the date established under subsection (a). *(Department of State Revenue; 45 IAC 4.1-11-2; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2039)*

45 IAC 4.1-11-3 Payment of estate tax

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-11-4; IC 6-4.1-11-6

Sec. 3. (a) The Indiana estate tax and any interest due thereon shall be paid to the department.

(b) If the Indiana estate tax is not paid on or before the due date, interest shall accrue on the delinquent portion of the tax at the rate of six percent (6%) per year from the due date to the date of payment. *(Department of State Revenue; 45 IAC 4.1-11-3; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2039)*

45 IAC 4.1-11-4 Credit against inheritance tax

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-11-5

Sec. 4. (a) The Indiana estate tax may be taken as a credit against the Indiana inheritance tax if:

(1) the inheritance tax is imposed after the estate tax is paid; and

(2) both taxes are imposed as a result of the same decedent's death.

(b) The credit provided by subsection (a) applies only to the inheritance tax due and not to any interest imposed under 45 IAC 4.1-9-3 due to the late payment of the inheritance tax. *(Department of State Revenue; 45 IAC 4.1-11-4; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2039)*

45 IAC 4.1-11-5 Appeal of estate tax determination

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-11-7

Sec. 5. (a) To commence an appeal of the department's determination of the amount of Indiana estate tax due, a complaint in which the department is named as the defendant must be filed in one (1) of the following courts:

(1) The probate court of the county in which administration of the estate is pending, if the appeal involves either a resident or a nonresident decedent's estate and administration of the estate is pending in Indiana.

(2) The probate court of the county in which the decedent was domiciled at the time of the decedent's death, if the appeal involves a resident decedent's estate and no administration of the estate is pending in Indiana.

(3) The probate court of any county in which any of the decedent's property was located at the time of the decedent's death, if the appeal involves a nonresident decedent's estate and no administration of the estate is pending in Indiana.

(b) When an appeal is initiated under subsection (a), the probate court determines the amount of Indiana estate tax due. *(Department of State Revenue; 45 IAC 4.1-11-5; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2799)*

Rule 12. Indiana Generation-Skipping Transfer Tax

45 IAC 4.1-12-1 Imposition of generation-skipping transfer tax

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-11.5

Sec. 1. (a) The Indiana generation-skipping transfer tax is imposed upon every generation-skipping transfer (other than a direct skip) that occurs at the same time as, and as a result of, the death of an individual, if:

(1) the original transferor is a resident of Indiana on the date of the original transfer; or

(2) the original transferor is not a resident of Indiana but the transferred property is tangible property with a legal situs in Indiana.

(b) As used in this section, "direct skip" shall mean a direct skip as defined in Section 2612 of the Internal Revenue Code.

(c) As used in this rule, "generation-skipping transfer" means a generation-skipping transfer subject to tax under Section 2601 of the Internal Revenue Code.

(d) As used in this rule, "original transferor" means a donor, grantor, testator, or trustor who by gift, grant, will, or trust makes a transfer of property that results in a generation-skipping transfer. *(Department of State Revenue; 45 IAC 4.1-12-1; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2040)*

45 IAC 4.1-12-2 Computation of tax

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-11.5-8

Sec. 2. (a) The amount of Indiana generation-skipping transfer tax due is the greater of the following amounts:

(1) The federal generation-skipping transfer tax credit multiplied by the value of the transferred property with a legal situs in Indiana over the total value of the transferred property.

(2) The federal generation-skipping transfer tax credit minus all generation-skipping transfer taxes paid to states other than Indiana.

(b) As used in this rule, "federal generation-skipping transfer tax credit" means the maximum credit allowable under Section 2604(b) of the Internal Revenue Code.

(c) For purposes of this section, the value of the transferred property equals the final value as determined for federal generation-skipping transfer tax purposes. *(Department of State Revenue; 45 IAC 4.1-12-2; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2040)*

45 IAC 4.1-12-3 Due date

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-11.5-9

Sec. 3. The Indiana generation-skipping transfer tax is due eighteen (18) months after the death of the original transferor. *(Department of State Revenue; 45 IAC 4.1-12-3; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2040)*

45 IAC 4.1-12-4 Payment of tax

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-11.5-10; IC 6-4.1-11.5-12

Sec. 4. (a) The Indiana generation-skipping transfer tax and any interest due thereon shall be paid to the department.

(b) If the tax is not paid on or before the due date, interest shall accrue on the delinquent portion of the tax at the rate of six percent (6%) per year from the due date to the date of payment. *(Department of State Revenue; 45 IAC 4.1-12-4; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2040)*

45 IAC 4.1-12-5 Tax return

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-11.5-11

Sec. 5. (a) A copy of the federal return, all its attachments, and any amendments thereto reporting a generation-skipping transfer that should reflect a federal generation-skipping transfer tax credit shall be filed with the department on or before the date specified in section 3 of this rule.

(b) Attached to the return required to be filed by subsection (a) shall be a schedule indicating:

(1) the value of the transferred property with a legal situs in Indiana; and

(2) the amount of the Indiana generation-skipping transfer tax determined to be due.

(Department of State Revenue; 45 IAC 4.1-12-5; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2040)

Rule 13. Penalties

45 IAC 4.1-13-1 Failure to file inheritance tax return

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-4-6

Sec. 1. (a) Except as otherwise provided in subsection (b), a person who fails to file an inheritance tax return on or before the due date shall be charged a penalty which equals the lesser of:

(1) fifty cents ($.50) per day for each day the return is delinquent; or

(2) fifty dollars ($50).

(b) The appropriate probate court shall include the penalty in the inheritance tax order which it issues with respect to the decedent's estate. However, the court may waive the penalty if the court finds that the person had a justifiable excuse for not filing the return on time. *(Department of State Revenue; 45 IAC 4.1-13-1; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2040)*

45 IAC 4.1-13-2 Improper transfers of decedent's property

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1

Sec. 2. (a) A person who violates a provision of 45 IAC 4.1-8 is subject to a penalty. The penalty consists of:

(1) the taxes imposed under IC 6-4.1 as a result of the decedent's death; and

(2) a fine not to exceed one thousand dollars ($1,000).

As used in this subsection, "person" includes a person who knowingly withholds information to obtain an improper transfer of a decedent's property.

(b) The department shall initiate the action required to collect the penalty which is due under this section. *(Department of State Revenue; 45 IAC 4.1-13-2; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2041)*

45 IAC 4.1-13-3 Safe deposit box information

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-8-6; IC 6-4.1-8-8; IC 35-50-3-3

Sec. 3. (a) Information acquired from the examination of the contents of a decedent's safe deposit box is confidential and may be disclosed only for the purpose of determining and collecting the inheritance tax.

(b) A person who recklessly discloses in an unauthorized manner any information acquired from the examination of the contents of a decedent's safe deposit box commits a Class B misdemeanor. *(Department of State Revenue; 45 IAC 4.1-13-3; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2041)*

45 IAC 4.1-13-4 Nonpayment by county to department

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-9

Sec. 4. (a) All inheritance tax revenues, in excess of the county's share, collected by a county treasurer during the preceding three (3) months are due and payable to the department on the first day of January, April, July, and October of each year.

(b) If any inheritance tax revenues due the state are not paid to the department within thirty (30) days after the date prescribed for payment in subsection (a), interest shall accrue on the delinquent portion of the tax revenues at the rate of ten percent (10%) per year from the due date to the date of payment.

(c) The county treasurer is personally liable for the interest payment required by subsection (b). *(Department of State Revenue; 45 IAC 4.1-13-4; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2041)*

45 IAC 4.1-13-5 Disclosure of inheritance tax information

Authority: IC 6-4.1-12-6
Affected: IC 6-4.1-12-12; IC 35-50-3-4

Sec. 5. (a) The department's inheritance tax files are confidential, and any person who gains access to such files shall not divulge any information disclosed by such files except as authorized by IC 6-4.1-12-12.

(b) A person who knowingly violates subsection (a):

(1) commits a Class C misdemeanor; and

(2) shall be immediately dismissed from the person's office or employment if the person is an officer or employee of the state of Indiana.

(Department of State Revenue; 45 IAC 4.1-13-5; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2041)

ARTICLE 5. INTANGIBLES TAX (REPEALED)

(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)

ARTICLE 6. PETROLEUM SEVERANCE TAX

Rule 1. General Provisions

45 IAC 6-1-1 Statutory scheme; purpose of rules

Authority: IC 6-8-1-12; IC 6-8.1-3-3
Affected: IC 6-8-1

Sec. 1. Introduction. The 1947 session of the Indiana Legislature enacted the Petroleum Severance Tax Act *[IC 6-8-1]*. Under this act *[IC 6-8-1]* a tax of one per cent (1%) of the value of all petroleum products which includes generally crude oil and gas severed and taken from the land is to be imposed upon the owner and producers of such petroleum products. While the tax is imposed upon the act of severing such natural resources from the ground, the Act *[IC 6-8-1]* imposes the responsibility for the payment of the tax upon any person purchasing such petroleum products or having such petroleum products in their possession in that a lien for the tax and penalties and interest thereon follows such petroleum products in the hands of the purchaser or the carrier. The Act *[IC 6-8-1]* further provides that any person purchasing or having possession of petroleum products upon which the petroleum severance tax has not been paid shall be personally liable for the reporting and payment of the amount of the lien of the tax and other charges.

It is further provided that if the purchaser or the person having possession of petroleum products shall pay the amount of the petroleum severance tax, they shall be entitled to reimbursement from the owners or producers and further in making payment of the petroleum severance tax these purchasers or possessors of petroleum products are not subject to any suit or action for recovery by the owners or producers of petroleum products and the remedy of such owners or producers is exclusively by way of claim for refund and litigation upon such claim for refund with the Division.

For these reasons it is the intent in the administration of the petroleum severance tax to impose the responsibility for the reporting and paying of the petroleum severance tax upon all purchasers and those having possession of petroleum products after severance from the ground which would include all petroleum products gatherers. The reporting and payment is to be made upon forms prescribed in these regulations and at the time prescribed in the regulations. The effect of this procedure is to make for more effective administration of the Act *[IC 6-8-1]*, prompt payment of the petroleum severance tax and the relief from the responsibility for any liens upon purchasers or possessors of petroleum products under the petroleum severance tax. *(Department of State Revenue; PT II,Sec 1; filed Jul 18, 1947, 9:30 am: Rules and Regs. 1948, p. 346)*

45 IAC 6-1-2 Petroleum severance tax division

Authority: IC 6-8-1-12; IC 6-8.1-3-3
Affected: IC 6-8-1

Sec. 2. Name. By virtue of a resolution duly adopted by the Indiana Revenue Board, under date of July 15, 1947, all of the authority, powers, duties, jurisdictions, officers, employees, books, papers, records, supplies, equipment, and appropriations of the Petroleum Severance Tax Department was transferred to the Indiana Department of State Revenue, and it was provided that it shall henceforth be designated as the Petroleum Severance Tax Division of the Indiana Department of State Revenue. *(Department of State Revenue; PT II,Sec 2; filed Jul 18, 1947, 9:30 am: Rules and Regs. 1948, p. 347)*

45 IAC 6-1-3 Definitions

Authority: IC 6-8-1-12; IC 6-8.1-3-3
Affected: IC 6-2.1; IC 6-8-1; IC 6-8-3

Sec. 3. Regulations–Definitions. (1) Persons. "For the purpose of this Act *[IC 6-8-1]* the word `person' shall be construed to mean and include any individual, assignee, receiver, commissioner, fiduciary, trustee, executor, administrator, firm, partnership, joint venture, pool, syndicate, association, corporation, estate, trust, or any other group or combination acting as a unit."

(2) Department or Division. "The term `Department' shall be construed to mean that agency of the State of Indiana to which is assigned the administration of the Gross Income Tax Act of 1933 *[IC 6-2.1]*, as amended, or, any agency of the State of Indiana to which the administration of the Petroleum Severance Tax Act *[IC 6-8-1]* may be assigned under the terms of the Indiana Department of State Revenue Act *[IC 6-8-3]*."

(3) Taxpayer. "The word `Taxpayer' shall be construed to mean any person by whom a tax is payable under this Act *[IC 6-8-1]*."

(4) Value or Measure of the Tax. "The term `value' as used herein as a measure of the tax imposed shall be construed to mean the value of the petroleum at the well from which it is produced as determined by the price paid, and, if no such price be paid or offered, then as determined pursuant to the rules or regulations of the Division."

(5) Petroleum. "The term `petroleum' shall be construed to mean and include petroleum oil and gas, and other hydrocarbons, whether liquid or gaseous form and regardless of gravity, which are severed from the land and produced from a well in the State of Indiana."

(6) Producer and Owner. "The term `producer' shall mean and include any person actually engaged in severing petroleum from the land direct.

The term `owner' shall mean and include any person receiving or entitled to receive a proportionate share of petroleum or a proportionate share of the proceeds of the sale of petroleum after production thereof by an operator, and without limitation of the foregoing, includes the owners of royalties, excess royalty, overriding royalty, mineral rights, or working interest."

(7) Excise or Privilege Tax. "A tax at the rate of one per cent (1%) of the value of all petroleum is hereby imposed as of the time of the severance of such petroleum from the land, upon all producers and owners thereof as an excise for the privilege of severing the same from the land and producing the same from the well, except when the gas from any well is used to pump or treat the same or when such gas is piped to landowner's private buildings for his own use."

(8) Purchaser. "The term `purchaser' shall mean any person engaged in the purchase of petroleum products as defined in this Act *[IC 6-8-1]* and shall include pipelines, refineries, and any other form of petroleum purchasers for the purpose of resale or use."

(9) Petroleum Gatherers. "The term `petroleum gatherer' is construed to mean those who are engaged in purchasing petroleum products as well as those who are engaged in gathering and transporting petroleum products in which they do not have the right, title or interest and shall include any person having in his possession petroleum products as defined in this Act *[IC 6-8-1]* upon which the petroleum severance tax has not been paid." *(Department of State Revenue; PT II,Sec 3; filed Jul 18, 1947, 9:30 am: Rules and Regs. 1948, p. 347)*

45 IAC 6-1-4 Tax rate

Authority: IC 6-8-1-12; IC 6-8.1-3-3
Affected: IC 6-8-1

Sec. 4. Rate of Tax. A tax of one per cent (1%) of the value of all petroleum products at the time of the severance of such petroleum products from the land is imposed. By "value" is meant the price paid for such petroleum products. *(Department of State Revenue; PT II,Sec 4; filed Jul 18, 1947, 9:30 am: Rules and Regs. 1948, p. 349)*

45 IAC 6-1-5 Time and place of tax; reporting; payment; penalty

Authority: IC 6-8-1-12; IC 6-8.1-3-3
Affected: IC 6-8-1-10; IC 6-8-1-11

Sec. 5. The Reporting of the Tax.

(1) Basis of the Tax. The tax is to be imposed at the rate of one per cent (1%) upon the value or sales price of petroleum products at the time of sale or delivery from the place of production.

(2) Method of Reporting. The petroleum severance tax is to be reported by all purchasers of petroleum products or gatherers of petroleum products at the time such petroleum products are transported from the place of production. The reporting of the tax is to be made on or after the first day of the month immediately following the preceding monthly period by the purchaser or petroleum products gatherer on forms prescribed by the Division. At the time of such reporting, a remittance for the amount of tax imposed upon the severance of petroleum products from the land is to be made to the Division. The purchaser or petroleum products gatherer is imposed with the responsibility to make report of the severance of petroleum products from the land and the payment of the tax thereupon for and on behalf of and out of funds belonging to the owner or producer as their interests may be.

The reports showing the amount and computation of the tax shall reflect the names and addresses of all owners or producers or interest holders participating in the production of petroleum products which have been severed from the land.

(3) Forms.

(a) Form 1. The Petroleum Severance Tax Division will make available forms to be used in making reports of and payment of the petroleum severance tax on behalf of all producers and owners as their interests may be in the production of petroleum

products. These reports shall show the total monthly amount of petroleum products severed from the land, the amount of tax thereupon and the amounts paid to the various owners or producers as their interest may be. This form should insofar as possible coincide with the oil run statement commonly utilized in the petroleum industry as a basis for the purpose of making payment for petroleum products and should be properly signed and certified.

(b) Form 2. When the petroleum gatherer makes the Petroleum Severance Tax Return and payment of the tax, it will be necessary for the purchaser of such petroleum products, for whom the gatherer is making conveyance of the petroleum products, to prepare and submit to the Petroleum Severance Tax Division an information return showing the total monthly amount of petroleum products severed from the land, the amount of tax thereupon and the amounts paid to the various owners or producers as their interest may be. This form should, insofar as possible, coincide with the oil run statement commonly utilized in the petroleum industry as the basis for the purposes of making payment for petroleum products and this information return should be properly signed and certified.

(4) Remittances. Remittance to the Petroleum Severance Tax Division of the Indiana Department of State Revenue, 141 South Meridian Street, Indianapolis, Indiana, for the amount of tax imposed under this Act *[IC 6-8-1]* may be made in cash or in checks or any other medium of exchange commonly accepted in business practices. The amount of tax thus computed and the liens imposed under this Act *[IC 6-8-1]* will not be considered extinguished until the remittance in the form of checks or otherwise have cleared the various banking institutions or depository and the Division is in receipt of the cash amount.

(5) Due Date of Monthly Returns and Tax Payments and Information Returns. The due date of all monthly petroleum tax severance returns as provided for under this Act *[IC 6-8-1]* and regulations thereto and payments for the amount of tax reflected thereon shall be made to the Petroleum Tax Division on and after the first day of the month immediately succeeding the monthly period for which the tax is computed and not later than the thirtieth day of the month immediately following the monthly period for which the tax is computed.

(6) Penalty. Any person upon whom the liability for making returns of and the payment of the petroleum severance tax is imposed failing to make the returns and/or payment of the tax provided for by the Act *[IC 6-8-1]* or regulations thereunder within the time prescribed shall be liable and the Division may assess a penalty of $2.00, or ten per cent (10%) of the amount of the tax whichever is the greater and shall charge and impose an interest charge upon the amount of unpaid tax at the rate of six per cent (6%) per year from the date when such tax became due and payable until the same is paid and for the purpose of computation of interest charges; any major fraction of a month shall be considered as a full month and any minor fraction shall be disregarded.

(Department of State Revenue; PT II,Sec 5; filed Jul 18, 1947, 9:30 am: Rules and Regs. 1948, p. 349) NOTE: Current Address is: State Office Building; 100 N. Senate Ave.; Indianapolis, IN 46204.

45 IAC 6-1-6 Confidentiality

Authority: IC 6-8-1-12; IC 6-8.1-3-3
Affected: IC 6-8-1-12

Sec. 6. Tax Returns and Information Thereto Confidential. All petroleum severance tax returns, the amount of tax reflected thereupon and all other information contained therein, shall be considered as confidential and shall not be divulged by any officer, deputy, or employee. *(Department of State Revenue; PT II,Sec 6; filed Jul 18, 1947, 9:30 am: Rules and Regs. 1948, p. 352)*

45 IAC 6-1-7 Exempt taxpayers

Authority: IC 6-8-1-12; IC 6-8.1-3-3
Affected: IC 6-8-1

Sec. 7. Exemptions. The Petroleum Severance Tax Act *[IC 6-8-1]* contains no provisions exempting any taxpayer from the imposition of the tax. *(Department of State Revenue; PT II,Sec 7; filed Jul 18, 1947, 9:30 am: Rules and Regs. 1948, p. 352)*

45 IAC 6-1-8 Excluded gas

Authority: IC 6-8-1-12; IC 6-8.1-3-3
Affected: IC 6-8-1-8

Sec. 8. Exclusions. The Petroleum Severance Tax Act *[IC 6-8-1]* permits such amounts of gas from any well which is used

in pumping or treating petroleum products or when such gas is piped and used by the landowner in his private buildings and for his own private use, to be excluded from taxable consideration under the provisions of this Act *[IC 6-8-1]*. *(Department of State Revenue; PT II,Sec 8; filed Jul 18, 1947, 9:30 am: Rules and Regs. 1948, p. 352)*

45 IAC 6-1-9 Refunds

Authority: IC 6-8-1-12; IC 6-8.1-3-3
Affected: IC 6-8.1-8; IC 6-8.1-9

Sec. 9. Refunds. Any producer and owner who has substantial reason to believe that a payment of the Petroleum Severance Tax has been made in excess of that which is legally due may make application for refund of such tax as has been paid by him or for him upon forms prescribed by the Petroleum Severance Tax Division which in substance shall properly identify such taxpayer the amount of the alleged overpayment, the date of the alleged overpayment, the payor of the tax and the area in which the petroleum products upon which the tax is imposed were produced. *(Department of State Revenue; PT II,Sec 9; filed Jul 18, 1947, 9:30 am: Rules and Regs. 1948, p. 352)*

45 IAC 6-1-10 Power of attorney; notice

Authority: IC 6-8-1-12; IC 6-8.1-3-3
Affected: IC 6-8-1-1

Sec. 10. Power of Attorney. Any taxpayer under the provisions of the Petroleum Severance Tax Act *[IC 6-8-1]* may authorize and designate by proper authority contained in a written instrument designating any person to act for and in behalf of such taxpayer in matters pertaining to the Petroleum Severance Tax Act *[IC 6-8-1]*. Such powers of attorney must be filed with the Petroleum Severance Tax Division in the particular matter under consideration. *(Department of State Revenue; PT II,Sec 10; filed Jul 18, 1947, 9:30 am: Rules and Regs. 1948, p. 352)*

45 IAC 6-1-11 Dissolution or withdrawal of corporations; certificate of clearance

Authority: IC 6-8-1-12; IC 6-8.1-3-3
Affected: IC 23-1-7

Sec. 11. Dissolution or Withdrawal of Corporations. Any corporate taxpayer under the provisions of the Petroleum Severance Tax Act *[IC 6-8-1]* desiring to dissolve under the provisions of the laws of the State of Indiana or any corporate taxpayer duly licensed and qualified to engage in business with the State of Indiana as a foreign corporation and desiring to withdraw from business within the State of Indiana shall make proper application to the Petroleum Severance Tax Division for the issuance of a certificate of clearance to the Office of the Secretary of State of the State of Indiana to permit the completion of dissolution or withdrawal proceedings. The application for the issuance of a certificate of clearance shall set forth that the taxpayer is engaged in dissolution or withdrawal proceedings, the date of the discontinuance of its business within the State of Indiana, a statement showing the location of its books and records within the State of Indiana and the further statement that as of the date of the discontinuance of its business it has not made purchase of petroleum products or has been in possession of petroleum products upon which the Petroleum Severance Tax has not been paid. The Petroleum Severance Tax Division shall promptly make an examination to determine whether the proper amount of petroleum severance tax has been paid and if all tax due has been paid, shall issue to the Office of the Secretary of State a certificate of clearance. If unpaid tax is found to be due, procedure toward collection of the tax and payment thereof shall be completed before the issuance of the certificate of clearance to the Office of the Secretary of State. *(Department of State Revenue; PT II,Sec 11; filed Jul 18, 1947, 9:30 am: Rules and Regs. 1948, p. 353)*

45 IAC 6-1-12 Books and records; retention

Authority: IC 6-8-1-12; IC 6-8.1-3-3
Affected: IC 6-8-1-23

Sec. 12. Books and Records. Every taxpayer under the provisions of this Act *[IC 6-8-1]* shall keep and maintain proper books and records, proper and sufficient to adequately reflect the severance of all petroleum products under this Act *[IC 6-8-1]* and the value thereof. Such books and records shall reflect the interest of the taxpayer, purchaser of the petroleum products, etc. Such books

and records shall be maintained and kept by the taxpayer for a period of three (3) years from the date of the filing of the return and the payment of the tax for each taxable period. *(Department of State Revenue; PT II,Sec 12; filed Jul 18, 1947, 9:30 am: Rules and Regs. 1948, p. 353)*

45 IAC 6-1-13 Fraud and evasion in recordkeeping

Authority: IC 6-8-1-12; IC 6-8.1-3-3
Affected: IC 6-8-1-23

Sec. 13. Fraud and Evasion. Entries in books and records made by any taxpayer with the intent to evade the provisions of the Petroleum Severance Tax Law and to defraud the State of Indiana shall subject any such taxpayer to the penalties provided for under the terms of the Act *[IC 6-8-1]*. *(Department of State Revenue; PT II,Sec 13; filed Jul 18, 1947, 9:30 am: Rules and Regs. 1948, p. 354)*

45 IAC 6-1-14 Subpoena

Authority: IC 6-8-1-12; IC 6-8.1-3-3
Affected: IC 6-8-1-26; IC 6-8.1-3-12

Sec. 14. Subpoena. Any taxpayer refusing or failing to permit the examination of any books and records relating to matters under the provisions of the Petroleum Severance Tax Act *[IC 6-8-1]* may be served with a subpoena to make such books and records available for examination by duly authorized representatives of the Division at the time and place specified in the subpoena in accordance with the provisions in Section 26 *[IC 6-8-1-26. Repealed by P.L.61-1980, SECTION 15.]* of the Petroleum Severance Tax Act. The failure to obey such subpoena may cause the Division to invoke the aid as provided for in the law of any court of competent jurisdiction to compel the attendance and testimony of witnesses, the production of records, books, papers, and documents. Any failure to obey such order of court may be punished by the court as a contempt thereof. *(Department of State Revenue; PT II,Sec 15; filed Jul 18, 1947, 9:30 am: Rules and Regs. 1948, p. 354)*

45 IAC 6-1-15 Powers of petroleum severance tax division

Authority: IC 6-8-1-12; IC 6-8.1-3-3
Affected: IC 6-8-1; IC 6-8-3; IC 6-8-5

Sec. 15. The Indiana Revenue Board acting under the authority of the Indiana Board of State Revenue Act *[IC 6-8-3]* has determined in a meeting held on the fifteenth (15th) day of July, 1947 that it is advisable, practicable and for the best interest of the State of Indiana to make transference, effective July 15, 1947, of all the authority, powers, duties, jurisdictions, officers, employees, books, papers, records, supplies, equipment and appropriations provided for the Indiana Petroleum Severance Tax Department which was created under the provisions of Chapter 278 *[IC 6-8-1]* of the Acts of the General Assembly of 1947 to the Indiana Department of State Revenue.

It was further resolved that the Indiana Petroleum Severance Tax Department will, effective with the date of this transfer, be officially and formally designated as the Petroleum Severance Tax Division of the Indiana Department of State Revenue. *(Department of State Revenue; Resolution; filed Jul 18, 1947, 9:30 am: Rules and Regs. 1948, p. 354)*

ARTICLE 7. ALCOHOLIC BEVERAGE TAX

Rule 1. Penalty for Late Remittance

45 IAC 7-1-1 Penalty for nonpayment

Authority: IC 6-8.1-3-3; IC 7.1-4-6-3.6
Affected: IC 7.1-4-6-2

Sec. 1. A person who is liable for the payment of any excise tax or other fee and does not make timely remittance of the tax or fee shall pay a penalty equal to ten per cent (10%) of the unpaid taxes or fees. *(Department of State Revenue; Rule (7.1-4-62)-1;*

filed Aug 29, 1977, 2:05 pm: Rules and Regs. 1978, p. 807)

45 IAC 7-1-2 Notice of failure to pay
Authority: IC 6-8.1-3-3; IC 7.1-4-6-3.6
Affected: IC 7.1-4-6-2

Sec. 2. The department shall notify any person who is liable for the payment of any excise tax or other fee and who has not made timely remittance of the tax or fee as soon as the department discovers the failure to remit. The notification shall inform the person of the amount of tax or fee and penalty due. *(Department of State Revenue; Rule (7.1-4-62)-2; filed Aug 29, 1977, 2:05 pm: Rules and Regs. 1978, p. 807)*

45 IAC 7-1-3 Penalty for nonpayment after notice
Authority: IC 6-8.1-3-3; IC 7.1-4-6-3.6
Affected: IC 7.1-4-6-2

Sec. 3. If any person, who is liable for the payment of any excise tax or other fee, receives notification from the department of the amount of tax or fee and penalty due and does not remit the tax or fee and penalty within ten (10) days of the receipt of the notification, the department shall assess and collect a penalty in an amount equal to the unpaid taxes or fees. *(Department of State Revenue; Rule (7.1-4-62)-3; filed Aug 29, 1977, 2:05 pm: Rules and Regs. 1978, p. 807)*

Rule 2. Confidential Disclosure

45 IAC 7-2-1 Confidential information; disclosure
Authority: IC 7.1-4-6-3.6
Affected: IC 7.1-4-6

Sec. 1. Unless in accordance with a judicial order, the department of state revenue, its counsel, agents, clerks, stenographers, or other employees, or former employees, shall not divulge any federal information disclosed by the documents required to be filed under this article, except to members, employees, and agents of the department of state revenue; or to the governor, or the attorney general in any action in respect to the amount of tax due under this article, or to any duly authorized officer of the United States. Any disclosure under this regulation *[45 IAC 7-2]* can only be made when it is agreed that the information is to be confidential and to be used solely for tax collection purposes. However, that information may be revealed upon the receipt of a certified request to any designated officer of the state tax department of any other state, district, territory, or possession of the United States when that state, district, territory, or possession permits the exchange of like information with the taxing officials of the state of Indiana and when it is agreed that the information is to be confidential and to be used solely for tax collection purposes. Any employee or agent of the department of state revenue or other state employee violating the provisions of this regulation *[45 IAC 7-2]* shall be subject to dismissal from his employment. *(Department of State Revenue; Alcoholic Beverage Tax Reg 7.1-4-6-1 to 7.1-4-6-8; filed Oct 29, 1979, 3:00 pm: 2 IR 1722)*

Rule 3. Beer Excise Tax Refund

45 IAC 7-3-1 Eligibility for refund
Authority: IC 7.1-4-2-8.1
Affected: IC 7.1-4-2-8.1

Sec. 1. Effective January 1, 1979, a brewer who brews and sells beer in this state will be entitled to a refund of one-half (1/2) of the beer excise tax it pays on any of the first one hundred thousand barrels of beer that it produces and distributes in Indiana in a particular year. *(Department of State Revenue; Reg 7.1-4-2-8.1, Sec. 1; filed Oct 29, 1979, 3:00 pm: 2 IR 1722)*

45 IAC 7-3-2 Filing refund claim

Authority: IC 7.1-4-2-8.1
Affected: IC 7.1-4-2-8.1

Sec. 2. The refund claim must be filed on a State of Indiana Claim Voucher Form A-12 at the close of each calendar year. *(Department of State Revenue; Reg 7.1-4-2-8.1, Sec. 2; filed Oct 29, 1979, 3:00 pm: 2 IR 1722)*

45 IAC 7-3-3 Monthly report breakdown

Authority: IC 7.1-4-2-8.1
Affected: IC 7.1-4-2-8.1

Sec. 3. The brewers monthly report must show a break down listing beer produced in the state and beer produced out of state. *(Department of State Revenue; Reg 7.1-4-2-8.1, Sec. 3; filed Oct 29, 1979, 3:00 pm: 2 IR 1722)*

45 IAC 7-3-4 Production and sales reports to substantiate claim

Authority: IC 7.1-4-2-8.1
Affected: IC 7.1-4-2-8.1

Sec. 4. Production records and sales records must be maintained to substantiate any refund claim. These records must be made available to the auditors of the Department of Revenue upon request. *(Department of State Revenue; Reg 7.1-4-2-8.1, Sec 4; filed Oct 29, 1979, 3:00 pm: 2 IR 1722)*

45 IAC 7-3-5 Wholesaler refund requirements

Authority: IC 7.1-4-2-8
Affected: IC 7.1-4-2-8

Sec. 5. (a) When a beer wholesaler has paid an excise tax on the following sales and the beer wholesaler has submitted proof of such a sale under 45 IAC 7-3-6, a beer wholesaler located within Indiana is entitled to a refund of the excise tax on:

(1) shipments of beer to out-of-state purchasers for consumption outside Indiana; and

(2) sale of beer to the United States government, its agencies, or its instrumentalities.

(b) Sales to individuals, private stores, or concessionaries located upon federal areas, are not exempt and no refund will be given. *(Department of State Revenue; 45 IAC 7-3-5; filed Aug 31, 1983, 9:49 am: 6 IR 1900)*

45 IAC 7-3-6 Proof required to receive refund

Authority: IC 7.1-4-2-8
Affected: IC 7.1-4-2-8

Sec. 6. (a) In order for the beer wholesaler to receive a refund of the beer excise tax, he must submit proof to the department in the following manner:

(1) If the sale is to the United States government, its agencies, or its instrumentalities, he must submit copies of the invoice stating the regular selling price less the excise tax.

(2) If the sale is to a person other than the United States government, its agencies, or its instrumentalities, he must submit copies of the invoice showing:

(A) purchaser's name;
(B) address;
(C) date;
(D) amount of beer sold; and
(E) either:
(i) a waybill, bill of lading or other evidence of shipment issued by a common carrier; or
(ii) a trip sheet, acceptable by the department, supported by a properly notarized export shipping form supplied by the department.

(Department of State Revenue; 45 IAC 7-3-6; filed Aug 31, 1983, 9:49 am: 6 IR 1901)

ARTICLE 8. CIGARETTES (REPEALED)

(Repealed by Department of State Revenue; filed Aug 4, 1982, 3:02 pm: 5 IR 1800; errata, 6 IR 127)

ARTICLE 8.1. CIGARETTE TAX

Rule 1. General Provisions

45 IAC 8.1-1-1 Covered transactions; intent of act

Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 6-7-1-1

Sec. 1. The cigarette tax imposed by this act (IC 6-7-1) is on the person or company who first sells, uses, consumes, handles or distributes cigarettes within Indiana. It is therefore a tax upon the sale or use of cigarettes and must be initially collected by the person or company engaged in the business of selling cigarettes in Indiana as a distributor. *(Department of State Revenue; Reg. 6-7-1-1(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1800)*

45 IAC 8.1-1-2 Distribution of sample packages; collection of tax by manufacturer

Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 6-7-1

Sec. 2. Sample packages of cigarettes may not be distributed in this State without Indiana cigarette tax stamps of the proper denomination affixed to the package. The tax on sample packages of 4 or less cigarettes may with authorization from the Department be paid by the manufacturer once a month on a reporting basis. *(Department of State Revenue; Reg. 6-7-1-1(020); filed Aug 4, 1982, 3:02 pm: 5 IR 1800)*

45 IAC 8.1-1-3 Exemption; sales to United States government

Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 6-7-1

Sec. 3. A distributor making sales or other dispositions of cigarettes to the United States Government, its agencies and instrumentalities, does not incur tax liability with respect to such sales or other disposition of cigarettes, and need not affix tax stamps to individual packages of cigarettes so sold or otherwise disposed of.

Distributors making sales or other dispositions of cigarettes in this State to individuals, private stores or concessionaires located upon Federal areas, and engaged in the business of selling cigarettes, do incur tax liability and must affix tax stamps of proper denomination to each individual package of cigarettes before delivery thereof pursuant to a sale or other disposition. *(Department of State Revenue; Reg. 6-7-1-1(030); filed Aug. 4, 1982, 3:02 pm: 5 IR 1800)*

45 IAC 8.1-1-4 "Cigarette" defined

Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 6-7-1-2

Sec. 4. Regulatory definition of "cigarette" is used synonymously with the Act. *(Department of State Revenue; Reg. 6-7-1-2(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1800)*

45 IAC 8.1-1-5 "Individual package" defined

Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 6-7-1-3

Sec. 5. Regulatory definition of "individual package" is used synonymously with the Act. *(Department of State Revenue; Reg. 6-7-1-3(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1800)*

45 IAC 8.1-1-6 "Person" or "company" defined
Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 6-7-1-4

Sec. 6. Regulatory definition of "person" or "company" is used synonymously with the Act. *(Department of State Revenue; Reg. 6-7-1-4(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1800)*

45 IAC 8.1-1-7 "Department" defined
Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 6-7-1-5

Sec. 7. Regulatory definition of "department" is used synonymously with the Act. *(Department of State Revenue; Reg. 6-7-1-5(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1800)*

45 IAC 8.1-1-8 "Distributor" defined
Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 6-7-1-6

Sec. 8. Regulatory definition of "distributor" is used synonymously with the Act. *(Department of State Revenue; Reg. 6-7-1-6(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1800)*

45 IAC 8.1-1-9 "Retailer" defined
Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 6-7-1-7

Sec. 9. Regulatory definition of "retailer" is used synonymously with the Act. *(Department of State Revenue; Reg. 6-7-1-7(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1800)*

45 IAC 8.1-1-10 "Consumption", "consumer", "consume" defined
Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 6-7-1-8

Sec. 10. Regulatory definition of "consumption", "consumer", "consume" is used synonymously with the Act. *(Department of State Revenue; Reg. 6-7-1-8(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1801)*

45 IAC 8.1-1-11 "Stamps" defined
Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 6-7-1-9

Sec. 11. Regulatory definition of "stamps" is used synonymously with the Act. *(Department of State Revenue; Reg. 6-7-1-9(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1801)*

45 IAC 8.1-1-12 "Counterfeit stamps" defined
Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 6-7-1-10

Sec. 12. Regulatory definition of "counterfeit stamps" is used synonymously with the Act. *(Department of State Revenue; Reg. 6-7-1-10(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1801)*

45 IAC 8.1-1-13 "Drop shipment" defined
Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 6-7-1-11

Sec. 13. Regulatory definition of "drop shipment" is used synonymously with the Act. *(Department of State Revenue; Reg. 6-7-1-11(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1801)*

45 IAC 8.1-1-14 Covered transactions; date of sale or use
Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 6-7-1-13

Sec. 14. The cigarette tax levy was assessed and imposed on and after July 1, 1947. *(Department of State Revenue; Reg. 6-7-1-13(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1801)*

45 IAC 8.1-1-15 Common carriers; duty to file on prescribed forms
Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 6-7-1-13.5

Sec. 15. The Department is authorized to supply the necessary forms to common carriers of cigarettes. These common carriers will file with the Department the required information on cigarettes they have taken possession of because the cigarettes were damaged, lost or stolen in transit, or not accepted by the consignee and where they were not returned to the manufacturer. Such forms would be submitted when the Department so designates. *(Department of State Revenue; Reg. 6-7-1-13.5(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1801)*

45 IAC 8.1-1-16 Stamp or metered impressions; evidence of tax payment
Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 6-7-1-14

Sec. 16. Payment of the tax imposed by the Act (IC 6-7-1) shall be evidenced by a stamp or meter impression affixed to or on individual cigarette packages.

Payment of the tax imposed by the Act (IC 6-7-1) on books, and sets of cigarette papers, wrappers, or tubes, made or prepared for the purpose of making cigarettes, shall be evidenced by the proper denomination of stamps affixed to the package containing such books, sets, wrappers or tubes. *(Department of State Revenue; Reg. 6-7-1-14(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1801)*

45 IAC 8.1-1-17 Registration requirements
Authority: IC 6-8.1-3-3
Affected: IC 6-7-1-15; IC 6-7-1-16

Sec. 17. The Department issues registration certificates upon the terms and conditions found in IC 6-7-1-16 and Regulation 6-7-1-16(010) *[45 IAC 8.1-1-25]*. *(Department of State Revenue; Reg. 6-7-1-15(b)(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1801)*

45 IAC 8.1-1-18 Distributor's registration certificate; revocation or suspension
Authority: IC 6-8.1-3-3
Affected: IC 6-7-1-15

Sec. 18. After notice and a hearing, the Department may revoke, cancel or suspend the registration certificate of any distributor for any violation of the provisions of the Act *[IC 6-7-1]*, or for noncompliance with the provisions thereof, or for noncompliance with any lawful rule or regulation promulgated by the Department. The action of the Department taken in any such case shall be subject to judicial review.

In the event a certificate is revoked or suspended, no refund of registration fees will be allowed.

In the event a distributor's certificate is suspended, such suspension shall mean the loss of all rights under the license for the

period of the suspension.

The length of revocation or suspension will be at the Department's discretion. *(Department of State Revenue; Reg. 6-7-1-15(b)(020); filed Aug 4, 1982, 3:02 pm: 5 IR 1801)*

45 IAC 8.1-1-19 Conduct of hearings; investigations

Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 4-21.5; IC 6-7-1; IC 6-8.1-1; IC 6-8.1-5-4

Sec. 19. Hearings shall be held at such place as the Department may designate.

Hearings may be held by the Department or any officer or employee of the Department designated by the Commissioner of the Indiana Department of Revenue. For this purpose the Department or such officer or employee of the Department may examine books, papers or memoranda bearing upon the sale or other disposition of cigarettes by such distributor, and may require the attendance of such registered distributor, or any officer or employee of such distributor, or any person having knowledge of the facts, and may take testimony and require proof, for the information of the Department.

In the conduct of any investigation, or hearing, under the Act *[IC 6-7-1]* or this regulation *[45 IAC 8.1]*, neither the Department nor any officer or employee thereof, shall be bound by the technical rules of evidence, and no informality in the proceedings, or in the manner of taking testimony, shall invalidate any rule, order, decision or regulation made, approved or confirmed by the Department.

For additional information in regards to the Department's administrative procedures see IC 6-8.1-1. *(Department of State Revenue; Reg. 6-7-1-15(b)(030); filed Aug 4, 1982, 3:02 pm: 5 IR 1802)*

45 IAC 8.1-1-20 Display of tax stamps on individual packages of cigarettes

Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 6-7-1-14

Sec. 20. Approved tax stamps furnished and sold by the Department must be physically affixed to individual packages of cigarettes. Provision is also made in the Act *[IC 6-7-1]* so that stamps may be "affixed" by tax meters.

Tax stamps shall be securely attached to each individual package of cigarettes so as to be clearly visible.

Tax stamps must be placed on each individual package originally sold to consumers as distinguished from the carton or larger containers of cigarettes. *(Department of State Revenue; Reg. 6-7-1-15(d)(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1802)*

45 IAC 8.1-1-21 Meter as alternate to stamps

Authority: IC 6-8.1-3-3
Affected: IC 6-7-1-15

Sec. 21. Upon application, the Department may authorize the use of tax stamp imprinting machines and meters for the purpose of imprinting tax stamps on individual packages of cigarettes.

All meters are under the direct control of the Department and all transfer assignments of anything pertaining thereto must first be authorized by the Department.

All repairs to either the machine or the meter are strictly prohibited except by a duly authorized representative of the manufacturer or the Department. Requests for service should be directed to the nearest branch office of the manufacturer.

Meter machine ink imprints on all packages must be clear and legible. All dies and other equipment must be serviced and cleaned according to the instructions issued by the manufacturer of the machines. Any failure of any distributor to maintain meters in such condition as to insure clear and legible imprints may be penalized by the Department by suspension of the certificate of registration for such period or periods as the Department may deem proper.

All distributors of cigarettes using meter stamping machines shall submit their requests for settings on forms furnished for that purpose by the Department.

All requests for meter settings shall be in units of 100 and must not exceed 99,900. *(Department of State Revenue; Reg. 6-7-1-15(d)(020); filed Aug 4, 1982, 3:02 pm: 5 IR 1802)*

45 IAC 8.1-1-22 Tampering with meter

Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 35-50-3-3

Sec. 22. A person who knowingly tampers with the printing or recording mechanism in a metered tax stamping machine commits a Class B misdemeanor.

As provided in IC 35-50-3-3: A person who commits a Class B misdemeanor shall be imprisoned for a fixed term of not more than one hundred eighty (180) days; in addition, he may be fined not more than one thousand dollars ($1,000.00). *(Department of State Revenue; Reg. 6-7-1-15(d)(030); filed Aug 4, 1982, 3:02 pm: 5 IR 1802)*

45 IAC 8.1-1-23 Requirement to display stamps in vending machines

Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 6-7-1

Sec. 23. Owners and operators of cigarette vending machines, shall load all packages of cigarettes so that if any packages are visible while in the machine, the stamps affixed thereto are clearly visible.

Vending machines shall have the name and address of the owner and of the operator, if not the same, conspicuously displayed on the front of the machine. *(Department of State Revenue; Reg. 6-7-1-15(d)(040); filed Aug 4, 1982, 3:02 pm: 5 IR 1802)*

45 IAC 8.1-1-24 Authorization of financial institutions to recharge meters

Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 6-7-1-15.1

Sec. 24. The Department may authorize certain banking institutions to act as the Department's agent in selling tax stamps and setting tax meters. *(Department of State Revenue; Reg. 6-7-1-15.1(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1803)*

45 IAC 8.1-1-25 Bonding of registrant

Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 6-7-1-16

Sec. 25. Upon application for a registration certificate a distributor must file a bond in form and with surety therefor approved by the Department of Revenue.

If a registrant shall be convicted of a violation of any of the provisions of the Act *[IC 6-7-1]*, or if his certificate shall be revoked and no review is had *[sic.]* of the order of the revocation, or if on review thereof the decision is adverse to the registrant, and the registrant refuses to pay any taxes, damages, fines, penalties, or costs adjudged against him by reason of a violation of any of the provisions of the Act *[IC 6-7-1]*, the Department may institute a suit upon such bond in the name of the State of Indiana for the entire amount of such liability and costs. Said suit upon the bond shall be in addition to any other remedy provided for in the Act *[IC 6-7-1]*. *(Department of State Revenue; Reg. 6-7-1-16(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1803)*

45 IAC 8.1-1-26 Purchase of tax stamps and metering units

Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 6-7-1-17

Sec. 26. The Department will not sell tax stamps to any but registered distributors and such others who established their need therefor by written statement satisfactory to the Department.

Registered distributors shall be agents of the Department to affix stamps.

Sales of tax stamps and/or meter units shall be made by the Department to registered distributors, subject to the discount prescribed by law, which discount shall be allowed at the time of purchase of the stamps or meter units. All other purchasers must pay full face value.

Distributors after meeting the Department's requirements for a credit bond and after authorization from the Department will pay for the tax stamps or meter units within 30 calendar days from the date of the purchase.

The payment date will be determined by a legible U. S. Postmark applied by the U.S. Postal Services, or a payment made in person at the Office of the Indiana Cigarette Tax Division. *(Department of State Revenue; Reg. 6-7-1-17(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1803)*

45 IAC 8.1-1-27 Responsibilities of distributor and retailer to affix stamps

Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 6-7-1-18

Sec. 27. Registered distributors must affix the proper stamp or stamps to each individual package of cigarettes before delivering such cigarettes pursuant to a sale of *[sic.]* other disposition.

Retailers who may receive unstamped cigarettes have the duty to make certain that stamps are affixed immediately on each individual package. *(Department of State Revenue; Reg. 6-7-1-18(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1803)*

45 IAC 8.1-1-28 Exception to stamping requirements for items in interstate commerce

Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 6-7-1-18; IC 6-7-1-19.5

Sec. 28. The tax imposed by the Act *[IC 6-7-1]* upon distributors of cigarettes within this State does not apply to cigarettes which are shipped from within this State to a point, outside the State, not to be returned to this State. Distributors need not affix tax stamps to the individual packages of cigarettes that are sold and shipped outside the State. The burden of proof, however, is at all times upon the Indiana distributor to show that such cigarettes actually went into interstate commerce. *(Department of State Revenue; Reg. 6-7-1-18(020); filed Aug 4, 1982, 3:02 pm: 5 IR 1803)*

45 IAC 8.1-1-29 Distributor's records

Authority: IC 6-7-1-15; IC 6-8.1-3-3
Affected: IC 6-7-1-19

Sec. 29. Every registered distributor of cigarettes shall keep complete and accurate records of cigarettes held, purchased, manufactured, brought in or caused to be brought in from without the State, or otherwise disposed of, and shall preserve and keep all invoices, bills of lading, sales records, copies of bills of sale and other pertinent papers and documents relating to the purchase, sale or disposition of cigarettes. Such books, records, papers and documents shall be kept at the location of the registered certificate unless approval is given by the Department in writing to have such records kept at another location, and at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. Such books, records, papers and documents shall be preserved for a period of at least three (3) years after the date of said documents, or the date of the entries thereof appearing in such records. *(Department of State Revenue; Reg. 6-7-1-19(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1803)*

45 IAC 8.1-1-30 Distributor's reports

Authority: IC 6-8.1-3-3
Affected: IC 6-7-1-19

Sec. 30. Every distributor in Indiana shall, on or before the 15th day of each calendar month, file a return with the Department showing the quantity of cigarettes manufactured, brought in or caused to be brought in from out of the State, or purchased during the preceding calendar month, and the quantity of cigarettes sold or otherwise disposed of during the calendar month. The return shall be made upon forms furnished and prescribed by the Department and shall contain such other information as the Department may reasonably require.

Every out of state distributor holding an Indiana registration certificate shall likewise file, on or before the 15th day of each calendar month, a return with the Department showing the following:

(1) The Indiana cigarette stamps and the individual package of cigarettes, cigarette papers, wrappers, and tubes, stamped with Indiana stamps or meter impressions, on hand at the beginning of the month. The purchases of Indiana stamps made during the month and the stamps and stamped items on hand at each month.

(2) A detailed list of stamped cigarettes, cigarette papers, wrappers or tubes distributed to any person or company in Indiana during the month.

(3) A detailed list of unstamped cigarettes, cigarette papers, wrappers and tubes distributed to registered distributors in Indiana.

(4) A copy of each cigarette credit issued to any customer.

Where a distributor under this Act *[IC 6-7-1]* keeps his books and records and conducts his entire accounting system on a basis of thirteen equal accounting periods annually, permission may be granted to such distributor upon formal request therefor to file returns within fifteen days after the end of each of the respective thirteen periods. *(Department of State Revenue; Reg. 6-7-1-19(020); filed Aug 4, 1982, 3:02 pm: 5 IR 1804)*

45 IAC 8.1-1-31 Additional reports for transactions in interstate commerce

Authority: IC 6-8.1-3-3
Affected: IC 6-7-1-19; IC 6-7-1-19.5

Sec. 31. Indiana distributors claiming exemption from the tax on cigarettes on the ground that shipment or deliveries were made in interstate commerce shall, within ten days after the first day of each month file with the Department the following:

(1) the name and address of all persons receiving such shipment or deliveries in such foreign state;

(2) the kind and quantity of the sales; and

(3) the date of delivery: as shown by delivery data in distributor's possession of the following description:

(a) A waybill, bill of lading or other evidence of shipment issued by a common carrier; or

(b) An insurance receipt or registry receipt issued by the United States Postal Department.

(c) A trip sheet signed by the seller's delivery agent and showing the signature and address of the person outside the State who received the goods delivered.

(Department of State Revenue; Reg. 6-7-1-19(030); filed Aug 4, 1982, 3:02 pm: 5 IR 1804)

45 IAC 8.1-1-32 Counterfeit stamps; penalty

Authority: IC 6-8.1-3-3
Affected: IC 6-7-1-21; IC 35-50-2-6

Sec. 32. The use of counterfeit stamps by a distributor constitutes a Class C felony.

Indiana Code 35-50-2-6 provides, "A person who commits a Class C felony shall be imprisoned for a fixed term of five (5) years with not more than three (3) years added for aggravating circumstances or not more than three (3) years subtracted from mitigating circumstances; in addition, he may be fined not more than ten thousand dollars ($10,000.00)." *(Department of State Revenue; Reg. 6-7-1-21(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1804)*

45 IAC 8.1-1-33 Affixing counterfeit or previously used stamps; penalty

Authority: IC 6-8.1-3-3
Affected: IC 6-7-1-21

Sec. 33. A person who knowingly affixes counterfeit or previously used cigarette stamps commits a Class C felony.

See Regulation 6-7-1-21(010) *[45 IAC 8.1-1-32]* for the provisions of a Class C felony. *(Department of State Revenue; Reg. 6-7-1-21(020); filed Aug 4, 1982, 3:02 pm: 5 IR 1804)*

45 IAC 8.1-1-34 Record keeping violations; penalty

Authority: IC 6-8.1-3-3
Affected: IC 6-7-1-22; IC 35-50-3-4

Sec. 34. Failure to keep accurate records results in the commission of a Class C misdemeanor.

Indiana Code 35-50-3-4 provides, "A person who commits a Class C misdemeanor shall be imprisoned for a fixed term of not more than sixty (60) days; in addition, he may be fined not more than five hundred dollars ($500.00)." *(Department of State Revenue; Reg. 6-7-1-22(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1804)*

45 IAC 8.1-1-35 Other violations; penalty
Authority: IC 6-8.1-3-3
Affected: IC 6-7-1-23; IC 35-50-3-3

Sec. 35. Any other violation of any provision in the Act *[IC 6-7-1]* for which no other provision for punishment has been made commits a Class B misdemeanor.

Indiana Code 35-50-3-3 provides, "A person who commits a Class B misdemeanor shall be imprisoned for a fixed term of not more than one hundred eighty (180) days; in addition, he may be fined not more than one thousand dollars ($1,000.00)." *(Department of State Revenue; Reg. 6-7-1-23(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1805)*

45 IAC 8.1-1-36 Seizure of property; resale by department; redemption
Authority: IC 6-8.1-3-3
Affected: IC 6-7-1-24

Sec. 36. Unstamped cigarettes subject to the tax are subject to seizure by the Department. The unstamped cigarettes with any receptacle or vending machine become property of the State.

The Department may sell the seized property at a public auction or allow the violator to redeem the seized property by payment of the tax due together with a fifty percent (50%) penalty and the costs incurred in the proceeding. *(Department of State Revenue; Reg. 6-7-1-24(a)(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1805)*

45 IAC 8.1-1-37 Selling unstamped cigarettes; penalty
Authority: IC 6-8.1-3-3
Affected: IC 6-7-1-24; IC 35-50-3-2

Sec. 37. The sale or holding for sale of unstamped cigarettes results in the commission of a Class A misdemeanor.

Indiana Code 35-50-3-2 provides, "A person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one (1) year; in addition, he may be fined not more than five thousand dollars ($5,000.00)." *(Department of State Revenue; Reg. 6-7-1-24(b)(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1805)*

45 IAC 8.1-1-38 Search warrants for untaxed cigarettes
Authority: IC 6-8.1-3-3
Affected: IC 6-7-1-25

Sec. 38. When the Department has reason to believe that any cigarettes are being transferred in violation of the Act *[IC 6-7-1]*, prior to any search the Department is required to obtain a search warrant from a court of competent jurisdiction.

The Department may seize cigarettes without tax stamps attached if they are in plain view. *(Department of State Revenue; Reg. 6-7-1-25(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1805)*

45 IAC 8.1-1-39 Mutilated stamps; replacement
Authority: IC 6-8.1-3-3
Affected: IC 6-7-1-27

Sec. 39. Where stamps or stamped individual packages of cigarettes have become mutilated or otherwise unfit for use, distributors shall notify the Department and upon verification that said stamps have not evidenced a taxable transaction, replacement stamps will be supplied or a refund will be issued. *(Department of State Revenue; Reg. 6-7-1-27(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1805)*

45 IAC 8.1-1-40 Unused stamps; refund
Authority: IC 6-8.1-3-3
Affected: IC 6-7-1-27

Sec. 40. Sales and transfers of Indiana Cigarette Revenue Stamps by one registered cigarette distributor to another registered cigarette distributor are not permitted unless authorization is given in writing by the Department to make such sale and transfer.

Where, at the time of terminating his business as a registered distributor in this State, a registered distributor has on hand unaffixed Indiana Cigarette Revenue Stamps, they may be returned to the Department and a refund will be given.

Cigarettes sold by registered distributors to other registered distributors must not be accompanied by loose stamps. Unless the packages of cigarettes sold have Cigarette Revenue Stamps affixed thereto, the sale should be completed without Cigarette Revenue Stamps entering into the transaction. *(Department of State Revenue; Reg. 6-7-1-27(020); filed Aug 4, 1982, 3:02 pm: 5 IR 1805)*

45 IAC 8.1-1-41 Procuring or inducing tax evasion; unlawful advertising

Authority: IC 6-8.1-3-3
Affected: IC 6-7-1-35; IC 6-7-1-36

Sec. 41. It shall be unlawful to:

(1) Procure or induce the evasion of the Cigarette Tax,

(2) Advertise, print, publish or otherwise offer to sell cigarettes within or into Indiana without payments of the Indiana Cigarette Tax.

(Department of State Revenue; Reg. 6-7-1-35(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1805)

45 IAC 8.1-1-42 Falsified reports; penalty

Authority: IC 6-8.1-3-3
Affected: IC 6-7-1-36; IC 35-50-3-4

Sec. 42. The making of false tax reports or false statements in any reports with the intent to defraud the State or evade the payment of the Cigarette Tax shall result in a Class C misdemeanor.

As provided in Indiana Code 35-50-3-4, a person who commits a Class C misdemeanor shall be imprisoned for a fixed term of not more than sixty (60) days; in addition, he may be fined not more than five hundred dollars ($500.00). *(Department of State Revenue; Reg. 6-7-1-36(010); filed Aug 4, 1982, 3:02 pm: 5 IR 1806)*

ARTICLE 9. EMPLOYMENT AGENCIES

Rule 1. General Provisions

45 IAC 9-1-1 Definitions

Authority: IC 6-8.1-3-3; IC 25-16-1-18; IC 25-16-2-1
Affected: IC 25-16-1

Sec. 1. Definitions. (a) "Accept" or "Secure," with reference to employment, means the commencement of employment by the applicant by actually beginning work.

(b) "Advertisement" means any communication of job information by an agency designed to reach potential applicants through any mass media.

(c) "Agency" is a licensed employment agency as defined in I.C. 1971, 25-16-1-11.

(d) "Applicant" means any individual seeking employment through a licensed employment agency.

(e) "Bona fide order of employment" is a written agency record of the employer's oral or written communication with an agency, which authorized the agency to refer an applicant to the employer.

(f) "Contract" is an agreement between the agency and the applicant which creates an obligation in the applicant to pay a fee conditional upon the agency acquiring an employment position for the applicant.

(g) "Department of Revenue" shall mean the Indiana Department of State Revenue, or its successor agency of state government.

(h) "Mass Media" includes, but is not limited to: newspapers, magazines, television, radio, cards, circulars, signs or telephone canvassing.

(i) "Permanent Position" is an employment position arranged by the employer to last longer than ninety (90) days.

(j) "Temporary Position" is an employment position arranged by the employer to last not more than ninety (90) days. A permanent position which is terminated within ninety (90) days of acquisition shall be considered a temporary position, unless the applicant leaves the position voluntarily or is released for cause by the employer.

(k) "Unilateral Termination" is a termination of employment where an applicant voluntarily leaves a position or is terminated for cause by the employer. *(Department of State Revenue; Rule 1; filed Mar 3, 1975, 2:10 pm: Rules and Regs. 1976, p. 415)*

45 IAC 9-1-2 Records of bona fide orders for employment

Authority: IC 6-8.1-3-3; IC 25-16-1-18; IC 25-16-2-1
Affected: IC 25-16-1

Sec. 2. Bona fide order for employment. (a) Accurate Record. The agency is required to have a bona fide order of employment for each position. The agency shall maintain a record of its bona fide orders of employment for one (1) year following the receipt of that order.

(b) Duration. An order for employment shall expire after thirty (30) days. Renewal of the order is required after thirty (30) days to allow the agency to rely on such order for advertising purposes. Renewal may be accomplished by oral verification with the employer.

(c) Form. Bona fide orders of employment shall be recorded on a form containing the following:

(1) Person communicating order of employment to the agency.

(2) Name of person recording the order of employment.

(3) Date.

(4) Name and address of employer and name of person to whom the applicant is to report for an interview.

(5) Conditions of employment, including salary, wages, expense allowance, hours and number of days of work per week, as provided by the employer.

(6) Job title and job requirements, as provided by the employer.

(d) Type of orders.

(1) Bona fide order of employment: An order of employment shall not be considered as a bona fide order of employment until it has been recorded.

(2) Proof of order: In the event that a complaint against an agency is filed with the Department of Revenue or the Administrator of Licensed Employment Agencies determines it to be necessary, the agency shall have the burden of showing:

(a) The order in writing.

(b) Any advertising used resulting from the order.

(c) Verification signed by the employer that said employer communicated the order to the agency.

(3) Order required for advertisement: No mass media advertising (as defined herein), may be used until a bona fide order of employment has been obtained.

(Department of State Revenue; Rule 2; filed Mar 3, 1975, 2:10 pm: Rules and Regs. 1976, p. 416)

45 IAC 9-1-3 Advertisements

Authority: IC 6-8.1-3-3; IC 25-16-1-18; IC 25-16-2-1
Affected: IC 25-16-1

Sec. 3. Advertising. (a) Advertisement for Employment with Agency. Any advertisement relating to a job with an employment agency must be defined as such in the advertisement.

(b) Advertisement for Fee Paid Placement. Advertisement may include the words "Fee Paid" or words describing a specific agreement between the employer and agency. (i.e. "1/2 Fee Paid"). *(Department of State Revenue; Rule 3; filed Mar 3, 1975, 2:10 pm: Rules and Regs. 1976, p. 416)*

45 IAC 9-1-4 Form of contracts; collection of fees; refunds

Authority: IC 6-8.1-3-3; IC 25-16-1-18; IC 25-16-2-1
Affected: IC 25-16-1

Sec. 4. Contracts. (a) Form of Contract. Every agency shall give to every applicant from whom a fee is to be received a contract, in which is stated all of the following:

(1) The name of the agency.

(2) The name and address of the employer communicating the order of the employment.

(3) The date of issuing the contract.

(4) The name of the applicant, the name of the employer to whom the applicant is sent, and the address where the applicant is to report for employment.

(5) The amount of fee to be charged and to be collected from the applicant and the amount of fee paid or advanced by the prospective employer and by whom paid or advanced.

(6) The kind of work or employment by job title.

(7) The daily hours of work; the wage or salary including any additional benefits of employment.

(8) Specific description of fees and refunds as provided by this regulation, and any other term, condition, or understanding agreed upon between the agency and applicant.

(9) There shall be printed on the face of the contract, clearly and conspicuously, in type no smaller than 10-point bold the following: "This agency is licensed by the Department of Revenue of the State of Indiana. Administrator for Licensed Employment Agencies, Room 104B, State Office Building, Indianapolis, Indiana 46204."

(10) Every such contract or receipt shall be made in original and duplicate, both to be signed by the applicant and the person acting for the employment agency. The duplicate shall be given to the applicant and the original shall be kept on file at the agency for three (3) years.

(b) Fees.

(1) A fee shall not be collected until an employment position has been secured (as defined herein).

(2) A schedule of fees shall be printed on the face of the contract with both dollar amounts and/or percentages of gross yearly earnings and/or gross monthly earnings shown. The schedule shall be filed with Administrator for Employment Agencies.

(3) The fee schedule shall be made up of a Permanent Position schedule and Temporary Position schedule.

(4) If the fee is to be paid partially by the employer, this shall be clearly expressed on the face of the contract.

(c) Refunds.

(1) When a Permanent Position becomes a Temporary Position, the fee shall be recomputed. A refund shall be due the applicant for any difference between the amount paid to the agency that is greater than the fee for the actual Temporary Position. If the fee for the actual Temporary Position is greater than the amount already paid by the applicant, the balance shall be due the agency from the applicant.

(2) It is possible for a Permanent Position to terminate within ninety (90) days and not be considered a Temporary Position for the purpose of this regulation. In such an instance the full Permanent Position fee is due to the agency. Such a termination must be verified by the employer or his agent expressing that the termination was "unilateral" in nature. A "unilateral" termination shall be one where an applicant voluntarily leaves a position or is terminated for cause by the employer. Activities considered by the Department of Revenue as sufficient for termination for cause include, but are not limited to, intoxication, dishonesty, unexcused tardiness, unexcused absenteeism, or insubordination.

(3) When a contract provides for a refund when a position is terminated through no fault of the applicant, a refund is due and/or a recomputation to a Temporary Position fee is required unless a "unilateral termination" is verified by the employer or his agent.

(4) All refunds shall be paid and at no time shall be shown as a credit to the account of the applicant.

(d) General Guidelines.

(1) Any statement on the face of the contract indicating that a deduction for income tax purposes is available for fees paid by the applicant for an employment position, must not state that such a deduction is available for Indiana State Income Tax purposes.

(2) No contract may contain the statement "Application for Employment," or any statement to that effect.

(Department of State Revenue; Rule 4; filed Mar 3, 1975, 2:10 pm: Rules and Regs. 1976, p. 417)

45 IAC 9-1-5 License revocation hearing

Authority: IC 6-8.1-3-3; IC 25-16-1-18; IC 25-16-2-1

Affected: IC 25-16-1-2

Sec. 5. Hearing Procedure. (a) Hearing and Notice before final determination as to revocation of license. Whenever it is the judgment of the Administrator of Licensed Employment Agencies that an agency has violated any provisions of Indiana law or Indiana rules and regulations pertaining to employment agencies, he may recommend that the agency's license be revoked. The final order or determination of any issue or case applicable to a specific agency shall not be made except upon hearing and timely notice of time, place, and nature thereof.

(b) Hearing Officers. The hearing shall be conducted by a panel of three (3) Hearing Officers appointed by the Commissioner of the Indiana Department of State Revenue. The final determination of the panel of Hearing Officers shall be made by at least a majority thereof and is subject to the approval of the Commissioner of the Indiana Department of Revenue.

(c) Notice. In all cases in which the Department of Revenue is the moving party it shall give at least twenty (20) days notice in writing by registered or certified mail with return receipt requested, addressed to the persons or person against whom an order or determination may be made at their last known place of residence, or place of business, which notice shall set forth therein a sufficient statement of the matters of fact or law to advise such a person of the matters in issue and to be heard or determined by said Department, together with notice of the time and place of such hearing. Said statement may be informal and need not conform to the requirements of a pleading in court. Whenever the hearing involves the claim, averment or complaint of, or is made by a private person, a copy or the substance thereof shall be included in or exhibited with such notice.

(d) Opportunity to be Present. No evidence shall be received except upon reasonable opportunity for all persons, against whom a determination may be made, to be present. The Hearing Officers presiding at the hearing shall have the power to administer oaths and affirmations, issue subpoenas, rule upon offers of proof and receive relevant oral or documentary evidence, take or cause depositions to be taken, regulate the course of the hearing and conduct of the parties, hold informal conferences for the settlement or simplification of the issues by consent of the party or parties, dispose of procedural motions and similar matters, and such other powers as may be given by the law relating to the supervision of employment agencies.

(e) Informal Hearings. The Department is hereby authorized to conduct such hearing in an informal manner and without recourse to the technical common-law rules of evidence required in proceedings in judicial courts, and such manner of proof and introduction of evidence shall be deemed sufficient and shall govern the proof, decision, and administrative or judicial review of all questions of fact if substantial, reliable and probative evidence supports the Department's determination. The Department shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. Every person who is a party to such proceedings shall have the right to submit evidence in open hearing and shall have the right of cross-examination. Hearings may be held at any place in the state determined by the Department.

(f) Record. The transcript of testimony adduced and exhibits admitted together with notice, all pleadings, exceptions, motions, requests and papers filed, other than briefs or arguments of law, shall constitute the complete and exclusive record of such hearing and determination of the Department, and it shall be available to all parties for examination. Any party may obtain a copy thereof at its expense. Whenever objections to recommended determinations are filed or when a petition for judicial review is filed, such evidence together with the original or a copy of all exhibits admitted, the notice of hearing, all pleadings, exceptions, motions, requests and papers filed, other than briefs or arguments of law, shall be incorporated in a transcript and certified by the Hearing Officers presiding at the hearing. Such transcript when so prepared and certified shall be admissible without further proof in any subsequent review or proceeding affecting such determination of the Department, and shall be prima facie evidence of all facts therein contained as the complete record of such hearing or determination.

(g) Finding of Facts. All issues of fact shall be considered and determined upon the record. The Department shall make an informal finding of facts which shall encompass the relevant facts shown by the evidence. Said finding of facts may be made by direct statement or by reference to the particular charges made in the complaint before the Department. A reference to the particular charges in the complaint shall be sufficient as a finding of facts. Notice of all final orders and determinations shall be given promptly by registered or certified mail, return receipt required, to all parties to the hearing by the Department of Revenue.

(h) Force and Effect. Revocation of licenses shall be effective as of the date of revocation by the Department, and shall remain revoked until and unless set aside by a court. *(Department of State Revenue; Rule 5; filed Mar 3, 1975, 2:10 pm: Rules and Regs. 1976, p. 418)*

ARTICLE 10. SPECIAL FUEL TAX

Rule 1. Definitions

45 IAC 10-1-1 "Administrator" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-103

Sec. 1. The term "administrator" shall mean the administrative head of the Indiana department of state revenue or an authorized agent thereof. *(Department of State Revenue; Reg 6-6-2.1-103(a)(010); filed Jan 3, 1983, 2:29 pm: 6 IR 291)*

45 IAC 10-1-2 "Fuel oil distributor" defined (Repealed)

Sec. 2. *(Repealed by Department of State Revenue; filed Apr 30, 1986, 3:34 pm: 9 IR 2189)*

45 IAC 10-1-3 "Sale" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-103

Sec. 3. For purposes of this chapter *[45 IAC 10]*, the term "sale" shall mean the transfer of title for compensation. *(Department of State Revenue; Reg 6-6-2.1-103(b)(020); filed Jan 3, 1983, 2:29 pm: 6 IR 291)*

45 IAC 10-1-4 "Licensed special fuel dealer" defined (Repealed)

Sec. 4. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-1-5 "Licensed special fuel user" defined (Repealed)

Sec. 5. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-1-6 "Motor vehicle" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-103

Sec. 6. (a) A "motor vehicle" is a vehicle which is propelled by an internal combustion engine or motor and is designed for highway use.

(b) Vehicles "designed for highway use" are those vehicles which are primarily adapted for, and engaged in highway transportation. All vehicles plated for general highway transportation or capable of being plated pursuant to Indiana law are presumed to be primarily adapted for and engaged in highway transportation.

(c) Fire trucks, fire protection apparatus, and ambulances owned by a municipality or by a person, police vehicles, and street equipment, as well as other vehicles publicly or privately owned which are primarily adapted for, and engaged in highway transportation are motor vehicles.

(d) The term "motor vehicle" shall not be construed to include road construction or maintenance machinery, vehicles not capable of being plated pursuant to Indiana law, well-boring or well-drilling apparatus, ditch-digging apparatus or other similar equipment which is occasionally operated or moved over public highways.

(e) Vehicles which operate on rails are not motor vehicles.

(f) Vehicles designed and operated primarily as farm implements for drawing farm machinery are not motor vehicles.

(g) Tractors, plows, mowing machines, harvesters, Big A's, and other agricultural implements, including farm machinery when mounted and transported upon a trailer, are not motor vehicles when operated on a farm or when traveling upon public highways from one field to another, or to or from places of repair, or supply.

(h) Vehicles exclusively operated on private property and not engaged in highway transportation are not motor vehicles.

–EXAMPLES–

(1) An automobile manufacturer tests cars on a test track located on the manufacturer's property. During such testing, the cars are neither fully equipped nor assembled. Although the automobiles' design may be for highway use, such cars are neither adapted for nor engaged in highway transportation, and therefore, would not be considered motor vehicles.

(2) In a mining operation, haulage trucks not capable of being plated are employed to transport coal from a pit to a crusher, and then to a processing plant. The roadway between the pit and the crusher is a private roadway, wholly owned by the mining company. The roadway between the crusher and the processing plant is a public highway. Since the haulage trucks are not capable of being plated pursuant to Indiana law, such vehicles presumably would not be motor vehicles even though they do occasionally travel upon Indiana highways.

(3) Same facts as in example (2) except that the haulage trucks are either plated or capable of being plated pursuant to Indiana law. Haulage trucks which operate exclusively from the pit to the crusher would not be considered motor vehicles since they would not be engaged in highway transportation. Haulage trucks which travel from the crusher to the plant or which occasionally travel upon public highways would be considered motor vehicles since they would be engaged in highway transportation.

(i) Certain classes of motor vehicles which have a common fuel reservoir for the purpose of locomotion along the highway and for operation of equipment with another commercial purpose, while motor vehicles for purposes of this chapter *[45 IAC 10]*, may upon determination by the administrator be declared exempt in part from taxation under this Act. *(Department of State Revenue; Reg 6-6-2.1-103(e)(010); filed Jan 3, 1983, 2:29 pm: 6 IR 291; filed Apr 30, 1986, 3:34 pm: 9 IR 2178)*

45 IAC 10-1-7 "Person" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-103

Sec. 7. (a) The term "person" shall mean any natural person, partnership, corporation, joint venture, firm, association, a representative appointed by a court, or the state, or its political subdivision, or other legal entity.

(b) For purposes of this chapter *[45 IAC 10]*, a corporate subsidiary shall be considered a "person".

(c) For purposes of this chapter *[45 IAC 10]*, a corporate division shall not be considered a person. *(Department of State Revenue; Reg 6-6-2.1-103(f)(010); filed Jan 3, 1983, 2:29 pm: 6 IR 291)*

45 IAC 10-1-8 "Public highway" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-103

Sec. 8. Regulatory definition of "public highway" is used synonymously with the Act. *(Department of State Revenue; Reg 6-6-2.1-103(g)(010); filed Jan 3, 1983, 2:29 pm: 6 IR 292)*

45 IAC 10-1-9 "Special fuel" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1; IC 6-6-2.1-103

Sec. 9. (a) "Special fuel" is all combustible gases and liquids except gasoline (as defined in IC 6-6-1.1), that are:

(1) suitable for generation of power in an internal combustion engine; or

(2) used exclusively for heating, industrial, and farm purposes other than for the operation of motor vehicles.

(b) For purposes of this chapter *[45 IAC 10]*, gasohol is not considered special fuel.

(c) For purposes of this chapter *[45 IAC 10]*, each 120 cubic feet of compressed natural gas (CNG) adjusted to a base temperature of 60 degrees Fahrenheit and a pressure of 14.73 pounds per square inch will be considered as one (1) gallon of special fuel. *(Department of State Revenue; Reg 6-6-2.1-103(h)(010); filed Jan 3, 1983, 2:29 pm: 6 IR 292; filed Apr 30, 1986, 3:34 pm: 9 IR 2179)*

45 IAC 10-1-10 "Special fuel dealer" defined (Repealed)

Sec. 10. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-1-11 "Special fuel dealer; sales through a self-service pump" defined (Repealed)

Sec. 11. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-1-12 "Use" defined
Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-103

Sec. 12. The term "use" shall mean the delivery or placing of special fuel into the fuel supply tank of a motor vehicle. "Use" shall not be construed to mean consumption of special fuel. *(Department of State Revenue; Reg 6-6-2.1-103(j)(010); filed Jan 3, 1983, 2:29 pm: 6 IR 293)*

45 IAC 10-1-13 "Special fuel user" defined (Repealed)

Sec. 13. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-1-14 "Special fuel user; leasing and rental of motor vehicles" defined (Repealed)

Sec. 14. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-1-15 "Authorized unlicensed user" defined (Repealed)

Sec. 15. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-1-16 "Taxable storage facility" defined (Repealed)

Sec. 16. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-1-17 "Authorized unlicensed special fuel dealer" defined (Repealed)

Sec. 17. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-1-18 "Metered pump" defined
Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-103

Sec. 18. For purposes of these regulations *[45 IAC 10]*, the term "metered pump" shall mean a stationary pump which is capable of metering the amount of special fuel dispensed from it. *(Department of State Revenue; Reg 6-6-2.1-103(o)(010); filed Jan 3, 1983, 2:29 pm: 6 IR 295)*

45 IAC 10-1-19 "Supplier" defined (Repealed)

Sec. 19. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

Rule 2. Imposition of Tax

45 IAC 10-2-1 Special fuel tax; imposition
Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 1. Except as otherwise provided, a tax known as the special fuel tax is imposed upon:
(1) the delivery or placing of special fuel into the fuel supply tank of a motor vehicle in Indiana;

(2) the delivery or placing of special fuel into the taxable storage facility of an authorized unlicensed user or authorized unlicensed dealer;

(3) the total number of gallons of special fuel on hand in an authorized unlicensed user's taxable storage facility at the time the Special Fuel Tax Collection Agreement becomes effective; and

(4) the total number of gallons of special fuel on hand in an authorized unlicensed dealer's taxable storage facility at the time the Special Fuel Tax Collection Agreement becomes effective.

(Department of State Revenue; Reg 6-6-2.1-201(010); filed Jan 3, 1983, 2:29 pm: 6 IR 295; errata, 6 IR 1250)

45 IAC 10-2-2 Dealer's liability (Repealed)

Sec. 2. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-2-3 User's liability (Repealed)

Sec. 3. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-2-4 Authorized unlicensed user's liability (Repealed)

Sec. 4. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-2-5 Authorized unlicensed dealer's liability (Repealed)

Sec. 5. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-2-6 Rate

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 6. The tax rate for special fuel is fifteen cents ($0.15) per gallon on and after June 1, 1985. *(Department of State Revenue; Reg 6-6-2.1-201(060); filed Jan 3, 1983, 2:29 pm: 6 IR 296; filed Apr 30, 1986, 3:34 pm: 9 IR 2180)*

45 IAC 10-2-7 Inventory tax

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-201; IC 6-8.1

Sec. 7. (a) Authorized unlicensed special fuel dealers having title to special fuel in storage and held for sale on the effective date of an increase in the license rate tax imposed under IC 6-6-2.1-201 are subject to an inventory tax based upon the gallonage in storage as of the close of the business day preceding the effective date of the increased license tax rate.

(b) Authorized unlicensed special fuel dealers subject to the inventory tax shall:

(1) take an inventory to determine the gallonage in storage for purposes of determining the inventory tax;

(2) report the gallonage on forms provided by the administrator; and

(3) pay the tax due within thirty (30) days of the inventory date.

(c) The amount of the inventory tax is equal to the inventory tax rate times the gallonage in storage as determined under subsection (a). The inventory tax rate is equal to the difference of the increased license tax rate minus the previous license tax rate.

(d) The inventory tax is a listed tax for purposes of IC 6-8.1. *(Department of State Revenue; Reg 6-6-2.1-202(010); filed Jan 3, 1983, 2:29 pm: 6 IR 296; filed Apr 30, 1986, 3:34 pm: 9 IR 2180)*

Rule 3. Exemptions

45 IAC 10-3-1 Special fuel sold for export

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 1. (a) Special fuel sold for export or exported from Indiana is a nontaxable transaction.

(b) Special fuel purchased and placed into the fuel supply tank of a motor vehicle in Indiana and consumed outside the state shall not be considered "exported" special fuel. *(Department of State Revenue; Reg 6-6-2.1-301(1)(010); filed Jan 3, 1983, 2:29 pm: 6 IR 296)*

45 IAC 10-3-2 Special fuel sold to or used by the U.S. government

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 2. Special fuel sold to the United States or an agency or instrumentality thereof or placed into the fuel supply tank of a governmental motor vehicle is exempt from tax. *(Department of State Revenue; Reg 6-6-2.1-301(2)(010); filed Jan 3, 1983, 2:29 pm: 6 IR 296)*

45 IAC 10-3-3 Special fuel sold to or used by post exchanges and federal reservations

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 3. Special fuel sold to a post exchange or other concessionaire located on a federal reservation within Indiana or placed into the fuel supply tank of a governmental motor vehicle is exempt from tax. *(Department of State Revenue; Reg 6-6-2.1-301(3)(010); filed Jan 3, 1983, 2:29 pm: 6 IR 296)*

45 IAC 10-3-4 Collection of tax permitted

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 4. Special fuel tax imposed upon the placing of special fuel into the fuel supply tank of nongovernmental motor vehicles located on a post exchange or federal reservation shall be collected, reported, and remitted to the administrator where permitted by federal law. *(Department of State Revenue; Reg 6-6-2.1-301(3)(020); filed Jan 3, 1983, 2:29 pm: 6 IR 296)*

45 IAC 10-3-5 Sales to a public transportation corporation

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 5. (a) Special fuel sold to or used by a public transportation corporation is exempt so long as the special fuel is placed into the fuel supply tank of a motor vehicle operated by a public transportation corporation for the sole purpose of transporting persons for compensation within the Indiana territory of that corporation.

(b) A public transportation corporation is a municipally owned public transportation system that:

(1) operates buses or other motor vehicles designed to carry more than six passengers, exclusive of the driver; and

(2) operates over designated and definite routes within one municipality and its suburban territory or within and between two or more municipalities located not more than ten miles apart, and within their suburban territories.

(A) For purposes of this section the suburban territory of a municipality consists of the areas within one mile outside its corporate boundaries and one additional mile for each fifty thousand population or major fraction thereof, in the municipality.

(c) To be afforded this exemption, qualifying carriers must embark, transport and disembark passengers within the Indiana territory of the public transportation corporation. Special fuel sold and delivered into the fuel supply tank of a motor vehicle operated by a public transportation corporation for the purpose of transporting persons over indefinite routes, or over definite and designated routes of which any portion of the routes are outside the corporation's Indiana territory, is subject to tax.

–EXAMPLE–

A qualifying public transportation corporation's carrier loads passengers within its Indiana territory. Subsequently, the carrier travels outside the boundaries prescribed by this section, and then returns to disembark passengers. Special fuel sold to or used by the carrier along this entire route is subject to tax. *(Department of State Revenue; Reg 6-6-2.1-301(4)(010); filed Jan 3, 1983, 2:29 pm: 6 IR 296; errata, 6 IR 1250)*

45 IAC 10-3-6 Sales to public transit department

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 6. (a) Special fuel sold to or used by a public transit department of a municipality is exempt provided that the special fuel is placed into the fuel supply tank of a motor vehicle operated by a public transit department for the sole purpose of transporting persons for compensation within a service area, no part of which is more than five miles outside the corporate limits of the municipality, and no part of which is outside Indiana.

(b) To be afforded this exemption, qualifying carriers must embark, transport, and disembark passengers within the service area of the municipality. Special fuel sold and delivered into the fuel supply tank of a motor vehicle operated by a public transit department for the purpose of transporting persons over routes of which any portion of the routes are more than five miles outside the corporate limits of the municipality or outside Indiana, is subject to tax.

–EXAMPLE–

A qualifying public transit department's carrier loads passengers within its Indiana territory. Subsequently, the carrier travels six (6) miles outside the corporate limits of the municipality and disembarks its passengers. Special fuel sold to or used by the carrier along this entire route is subject to tax. *(Department of State Revenue; Reg 6-6-2.1-301(5)(010); filed Jan 3, 1983, 2:29 pm: 6 IR 297)*

45 IAC 10-3-7 Sales to common carriers

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 7. (a) Special fuel sold to or used by a common carrier is exempt provided that the special fuel is placed into the fuel supply tank of a common carrier for the sole purpose of transporting passengers within a service area which is not larger than one county and counties contiguous to that county, all of which are located in Indiana.

(b) For purposes of this section, the term "common carrier" shall mean any person that holds itself out to the general public to engage in the transportation by motor vehicle of passengers for compensation whether over regular or irregular routes.

(c) For purposes of this section, the term "common carrier" shall not be construed to mean motor vehicles that are operated by public transportation corporations or public transit departments.

(d) To be afforded this exemption, common carriers must embark, transport, and disembark passengers within the service area of the common carrier. Special fuel sold and delivered into the fuel supply tank of a motor vehicle operated by a common carrier for the purpose of transporting persons over routes that are outside the service area of the common carrier is subject to tax.

–EXAMPLE–

(1) A taxicab company operates in Marion and Hamilton counties. The company's taxicab embarks a passenger in Marion county and travels directly over an irregular route to Hamilton county, where the passenger is disembarked. Special fuel sold to or used by the taxicab along the entire route is exempt.

(2) A church bus transports parishioners for compensation within the boundaries of one county. Special fuel sold to or used by the bus would be subject to tax since the service is held out to the parishioners rather than to the general public. *(Department of State Revenue; Reg 6-6-2.1-301(6)(010); filed Jan 3, 1983, 2:29 pm: 6 IR 297)*

45 IAC 10-3-8 Special fuel used for transportation, application of plant food materials or agricultural chemicals

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 8. (a) Special fuel placed into the fuel supply tank of self-propelled equipment which is specially adapted for over-the-

road usage and operated for the transportation and application of plant food materials or agricultural chemicals is nontaxable so long as the self-propelled equipment is not a motor vehicle.

(b) Special fuel placed into a motor vehicle which is specially adapted for over-the-road usage and the transportation and application of plant food material, or agricultural chemicals is exempt only to the extent that the motor vehicle is used for such operation.

(c) A motor vehicle to which equipment specially adapted for over-the-road usage and the transportation and application of plant food materials or agricultural chemicals is permanently attached is a motor vehicle which is specially adapted for over-the-road usage and application of plant food materials or agricultural chemicals. A motor vehicle from which such equipment may be removed or unhitched is not a motor vehicle which is specially adapted for over-the-road usage and application of plant food materials or agricultural chemicals. *(Department of State Revenue; Reg 6-6-2.1-301(7)(010); filed Jan 3, 1983, 2:29 pm: 6 IR 297)*

45 IAC 10-3-9 Special fuel used in ready mix concrete trucks

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 9. (a) Thirty percent (30%) of special fuel which is withdrawn from a licensed special fuel user's storage facility and is placed into the fuel supply tank of a ready mix concrete truck by the licensed special fuel user is exempt from tax.

(b) This exemption is not afforded to authorized unlicensed users and persons that are not licensed as special fuel users.

–EXAMPLE–

The owner and driver of a ready mix concrete truck is a licensed special fuel user. While away from the taxpayer's special fuel storage facility the licensee stops at a diesel fuel service station on which special fuel self-service pumps are located. The licensee purchases special fuel from the licensed special fuel dealer and places the special fuel into the fuel supply tank of a ready mix concrete truck owned by the licensee. Although the owner is a licensed special fuel user and physically placed special fuel into the fuel supply tank of a ready mix concrete truck, the licensed special fuel user is not afforded the thirty percent (30%) exemption since the special fuel was not withdrawn from the special fuel storage facility owned by the licensed special fuel user. *(Department of State Revenue; Reg 6-6-2.1-301(8)(010); filed Jan 3, 1983, 2:29 pm: 6 IR 298)*

45 IAC 10-3-10 Presumption of taxability; recordkeeping; exemption certificates

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 10. (a) As a general rule, all special fuel acquired by a nonlicensed person is presumed to be acquired for the operation of a motor vehicle.

(b) Every licensed and nonlicensed person who has a special fuel storage facility and acquires special fuel must keep adequate books and records so that the administrator may determine the amount of the person's special fuel tax liability.

(c) A licensed special fuel dealer is not required to produce further evidence of exemption or nontaxability if the purchaser provides an exemption certificate which certifies, in form prescribed by the administrator, that the acquisition of special fuel is exempt from the tax.

(d) A person must retain the books and records for a period of at least three (3) years after the date the final payment of the particular tax liability was due, unless after an audit, the administrator consents to earlier destruction. In addition, if the limitation on assessments is extended beyond three (3) years for a particular tax liability, the person must retain the books and records until the assessment period is over. A person must allow inspection of the books, records, and returns by the administrator or authorized agents at all reasonable times. *(Department of State Revenue; Reg 6-6-2.1-301(020); filed Jan 3, 1983, 2:29 pm: 6 IR 298; filed Apr 30, 1986, 3:34 pm: 9 IR 2180)*

45 IAC 10-3-11 Proportional exemptions for special fuel used in motor vehicles with common fuel reservoirs

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-201

Sec. 11. (a) A special fuel taxpayer is entitled to a proportional use exemption for tax paid on use of special fuel for a commercial purpose when the special fuel is placed into the fuel supply tank of the taxpayer's motor vehicle which has a common

fuel supply reservoir for both locomotion on a public highway and a commercial purpose which is exempt from the special fuel tax, and if the person is the purchaser of the special fuel and has paid the special fuel tax thereon.

(b) For purposes of subsection (a), proportional use exemptions shall be presumed to be as follows:

(1) For tank trucks, twenty-four percent (24%) of the special fuel placed into the fuel supply tank of a tank truck which has a common fuel reservoir for both locomotion on the highway and the operation of pumping equipment.

(2) For sanitation trucks, forty-one percent (41%) of the special fuel placed into the fuel supply tank of a sanitation truck which has a common fuel reservoir for both locomotion on the highway and the operation of refuse collection equipment.

(3) For refrigeration trucks, fifteen percent (15%) of the special fuel placed into the fuel supply tank of a refrigeration truck which has a common fuel reservoir for both locomotion on the highway and the operation of the refrigeration equipment.

(4) For mobile cranes, forty-two percent (42%) of the special fuel placed into the fuel supply tank of a mobile crane which has a common fuel reservoir for both locomotion on the highway and the operation of the crane.

(5) For bulk feed trucks, fifteen percent (15%) of the special fuel placed into the fuel supply tank of a bulk feed truck which has a common fuel reservoir for both locomotion on the highway and the operation of pumping equipment.

(6) For milk tank trucks, thirty percent (30%) of the special fuel placed into the fuel supply tank of a milk tank truck which has a common fuel reservoir for both locomotion on the highway and the operation of pumping equipment.

(7) For lime spreader trucks, fifteen percent (15%) of the special fuel placed into the fuel supply tank of a lime spreader truck which has a common fuel reservoir for both locomotion on the highway and the operation of spreading equipment.

(8) For spray trucks, fifteen percent (15%) of the special fuel placed into the fuel supply tank of a spray truck which has a common fuel reservoir for both locomotion on the highway and the operation of spraying equipment.

(9) For seeder trucks, fifteen percent (15%) of the special fuel placed into the fuel supply tank of a seeder truck which has a common fuel reservoir for both locomotion on the highway and the operation of seeding equipment.

(10) For leaf trucks, twenty percent (20%) of the special fuel placed into the fuel supply tank of a leaf truck which has a common fuel reservoir for both locomotion on the highway and the operation of shredding equipment.

(11) For boom trucks or block booms, twenty percent (20%) of the special fuel placed into the fuel supply tank of a boom truck or block boom which has a common fuel reservoir for both locomotion on the highway and the operation of the boom equipment.

(12) For service trucks with a jackhammer or pneumatic drill, fifteen percent (15%) of the special fuel placed into the fuel supply tank of a service truck with a jackhammer or pneumatic drill which has a common fuel reservoir for both locomotion on the highway and the operation of the jackhammer or pneumatic drill.

(13) For trucks with a power take-off hydraulic winch, twenty percent (20%) of the special fuel placed into the fuel supply tank of a truck with a power take-off hydraulic winch which has a common fuel reservoir for both locomotion on the highway and the operation of the hydraulic winch.

(14) For wreckers, ten percent (10%) of the special fuel placed into the fuel supply tank of a wrecker which has a common fuel reservoir for both locomotion on the highway and the operation of the hoist.

(15) For semitractor wreckers, thirty-five percent (35%) of special fuel placed into the fuel supply tank of a semitractor wrecker which has a common fuel reservoir for both locomotion on the highway and the operation of the hoist.

(16) For car carriers with a hydraulic winch, ten percent (10%) of special fuel placed into the fuel supply tank of a car carrier with a hydraulic winch which has a common fuel reservoir for both locomotion on the highway and the operation of the hydraulic winch.

(17) For dump trucks, twenty-three percent (23%) of special fuel placed into the fuel supply tank of a dump truck which has a common fuel reservoir for both locomotion on the highway and the operation of the dump mechanism.

(18) For semitractor and dump trailer combinations (commonly referred to as dump trailers), fifteen percent (15%) of special fuel placed into the fuel supply tank of a semitractor and dump trailer combination which has a common fuel reservoir for both locomotion on the highway and the operation of the dump mechanism.

(19) For semitractor and trailer combinations (commonly referred to as tank transports), fifteen percent (15%) of special fuel placed into the fuel supply tank of a semitractor and tank trailer combination which has a common fuel reservoir for both locomotion on the highway and the operation of the pumping equipment.

(20) For pneumatic tank trucks, fifteen percent (15%) of special fuel placed into the fuel supply tank of a pneumatic tank truck which has a common fuel reservoir for both locomotion on the highway and the operation of the pumping equipment.

(21) For sanitation receptacle carriers (commonly referred to as sanitation dump trailers), fifteen percent (15%) of special fuel placed into the fuel supply tank of a sanitation receptacle carrier which has a common fuel reservoir for both locomotion on

the highway and the operation of the winching or dumping mechanism.

(22) For line trucks or aerial lift trucks, twenty percent (20%) of special fuel placed into the fuel supply tank of a line truck or aerial lift truck which has a common fuel reservoir for both locomotion on the highway and the operation of the lift equipment.

(23) For digger-derrick trucks, twenty percent (20%) of special fuel placed into the fuel supply tank of a digger-derrick truck which has a common fuel reservoir for both locomotion on the highway and the operation of the other commercial equipment.

(24) For sewer cleaning trucks, sewer jets, or sewer vactors, thirty-five percent (35%) of special fuel placed into the fuel supply tank of a sewer cleaning truck, a sewer jet, or a sewer vactor which has a common fuel reservoir for both locomotion on the highway and the operation of the cleaning equipment.

(25) For hot asphalt distribution trucks, ten percent (10%) of special fuel placed into the fuel supply tank of a hot asphalt distribution truck which has a common fuel reservoir for both locomotion on the highway and the operation of the distribution equipment.

(26) For snow plow trucks, ten percent (10%) of special fuel placed into the fuel supply tank of a snow plow truck which has a common fuel reservoir for both locomotion on the highway and the operation of the plow.

(27) For carpet cleaning vans, fifteen percent (15%) of special fuel placed into the fuel supply tank of a carpet cleaning van which has a common fuel reservoir for both locomotion on the highway and the operation of the cleaning equipment.

(28) For salt spreaders or dump trucks with spreaders, fifteen percent (15%) of special fuel placed into the fuel supply tank of a salt spreader or a dump truck with a spreader which has a common fuel reservoir for both locomotion on the highway and the operation of the spreading equipment.

(29) For sweeper trucks, twenty percent (20%) of special fuel placed into the fuel supply tank of a sweeper truck which has a common fuel reservoir for both locomotion on the highway and the operation of the sweeping equipment.

(30) For bookmobiles, twenty-five percent (25%) of special fuel placed into the fuel supply tank of a bookmobile which has a common fuel reservoir for both locomotion on the highway and the operation of other commercial equipment.

(31) For buses, ten percent (10%) of special fuel placed into the fuel supply tank of a bus which has a common fuel reservoir for both locomotion on the highway and the operation of other commercial equipment.

(32) For fire trucks, forty-eight percent (48%) of special fuel placed into the fuel supply tank of a fire truck which has a common fuel reservoir for both locomotion on the highway and the operation of other commercial equipment.

(33) For super suckers, ninety percent (90%) of special fuel placed into the fuel supply tank of a super sucker which has a common fuel reservoir for both locomotion on the highway and the operation of other commercial equipment.

(c) Notwithstanding the provisions of subsection (b) (1-33) *[subsection (b)]*, special fuel taxpayers operating listed motor vehicles which consume greater portions of fuel from a common fuel reservoir for a commercial purpose other than locomotion on a public highway than provided in subsection (b) (1-33) *[subsection (b)]* are eligible for a greater exemption to be determined by the administrator after:

(1) a showing by the licensed special fuel user or dealer of the portion of special fuel used for the operation of equipment other than for locomotion on the public highway; and

(2) presentation of documents and information as requested by the administrator.

(d) The exemptions in this section are not afforded to the following:

(1) Authorized unlicensed users.

(2) Authorized unlicensed dealers.

(3) Persons not licensed as special fuel users or special fuel dealers.

(e) Notwithstanding the provisions of subsection (b) (1-33) *[subsection (b)]*, special fuel taxpayers operating motor vehicles not listed in subsection (b) (1-33) *[subsection (b)]* which consume portions of fuel from a common fuel reservoir for a commercial purpose other than locomotion on a public highway are eligible for a proportional use exemption to be determined by the administrator after:

(1) a showing by the licensed special fuel user or dealer of the portion of special fuel used for the operation of equipment other than for locomotion on the public highway; and

(2) presentation of documents and information as requested by the administrator.

(f) The exemptions in this section are afforded only to licensed special fuel dealers and licensed special fuel users. However, any person may obtain a refund of special fuel tax for a proportion of the special fuel purchased and placed directly into the fuel supply tank of a motor vehicle from a metered pump at a retail outlet. *(Department of State Revenue; Reg 6-6-2.1-301(030); filed Jan 3, 1983, 2:29 p.m.: 6 IR 298; filed Apr 30, 1986, 3:34 p.m.: 9 IR 2181; filed Mar 6, 1991, 2:20 p.m.: 14 IR 1370)*

45 IAC 10-3-12 Sales by licensed special fuel dealers (Repealed)

Sec. 12. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-3-13 Sales by authorized unlicensed dealers (Repealed)

Sec. 13. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

Rule 4. Licenses

45 IAC 10-4-1 Dealer's license requirements (Repealed)

Sec. 1. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-4-2 Dealer's license; application (Repealed)

Sec. 2. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-4-3 User license requirements (Repealed)

Sec. 3. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-4-4 Fuel oil distributor's license (Repealed)

Sec. 4. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-4-5 Application for fuel oil distributor's license (Repealed)

Sec. 5. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-4-6 Bond of dealer and user licenses (Repealed)

Sec. 6. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-4-7 Dealer's and user's licenses; cancelled bond

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 7. (a) If a licensed special fuel dealer's or licensed special fuel user's bond on file becomes cancelled or otherwise invalid, the licensee must furnish the administrator with a bond satisfying the requirements provided by this chapter *[45 IAC 10]*.

(b) The bond so furnished by the licensee shall be dated so that no lapse in time occurs between the effective date of the new bond and the date on which the previous bond became cancelled or otherwise invalid.

(c) If the licensed special fuel dealer or licensed special fuel user fails to furnish such bond within the time period prescribed by the administrator, the licensee shall be subject to immediate license cancellation. *(Department of State Revenue; Reg 6-6-2.1-408(020); filed Jan 3, 1983, 2:29 pm: 6 IR 300)*

45 IAC 10-4-8 Bond increases; financial statement

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-409

Sec. 8. (a) Periodically, the administrator may review a licensed special fuel user's or licensed special fuel dealer's account to determine whether the licensee's bond on file is in an amount large enough to adequately cover the licensee's tax liability.

(b) If the administrator determines that the licensee's financial condition warrants the bond on file to be in a larger amount, the administrator may require the licensee to furnish such bond provided that such bond satisfies the requirements of section 408 of this chapter *[45 IAC 10-4-6 and 45 IAC 10-4-7]*.

(c) If the licensee fails to provide such bond within the time period prescribed by the administrator, the licensee may be subject to license cancellation in the same manner as prescribed by section 415 of this chapter *[45 IAC 10-4-14 and 45 IAC 10-4-15]*.

(d) The administrator may require an audited financial statement. *(Department of State Revenue; Reg 6-6-2.1-409(010); filed Jan 3, 1983, 2:29 pm: 6 IR 300; errata, 6 IR 1250; filed Apr 30, 1986, 3:34 pm: 9 IR 2182)*

45 IAC 10-4-9 Waiver of bond

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1; IC 6-6-2.1-410

Sec. 9. The administrator may waive the bond requirement if:

(1) a special fuel user or special fuel dealer is also bonded as a gasoline distributor under IC 6-6-1.1; and

(2) a rider is issued to include special fuel tax liability for a specified amount;

(3) a special fuel user or a special fuel dealer is authorized to pay the tax as required by this chapter *[45 IAC 10]* to his supplier as provided in IC 6-6-2.1-505 *[45 IAC 10-5-8 through 45 IAC 10-5-15]*; or

(4) a special fuel dealer sells and delivers or sells and causes to be delivered special fuel exclusively for heating, industrial and farm purposes other than for the operation of motor vehicles.

(Department of State Revenue; Reg 6-6-2.1-410(010); filed Jan 3, 1983, 2:29 pm: 6 IR 300; filed Apr 30, 1986, 3:34 pm: 9 IR 2182)

45 IAC 10-4-10 Investigation of application

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 10. (a) Prior and subsequent to the administrator's issuing of a license, or approval of Special Fuel Tax Collection Agreement, the administrator may make any investigation considered necessary for the enforcement of this Act *[IC 6-6]*.

(b) The administrator may contact a supplier of special fuel to determine a person's tax liability. *(Department of State Revenue; Reg 6-6-2.1-412(010); filed Jan 3, 1983, 2:29 pm: 6 IR 300)*

45 IAC 10-4-11 Issuance of license

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 11. Upon determining that the licensing requirements have been met, the administrator may issue the applicant a license to remain effective unless cancelled under this chapter *[45 IAC 10]*. *(Department of State Revenue; Reg 6-6-2.1-412(020); filed Jan 3, 1983, 2:29 pm: 6 IR 300)*

45 IAC 10-4-12 Licenses nonassignable

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 12. A license issued under this chapter *[45 IAC 10]* is not assignable and and *[sic.]* is valid only for the person in whose name it is issued.

–EXAMPLE–

Taxpayer A is a licensed special fuel dealer who owns and operates a filling station at which special fuel is sold. Taxpayer A retires. Taxpayer B, assumes ownership and continues to operate under the prior license. Since the special fuel dealer's license was issued to Taxpayer A, Taxpayer B is operating without a license, and therefore, is operating illegally. *(Department of State Revenue; Reg 6-6-2.1-413(010); filed Jan 3, 1983, 2:29 pm: 6 IR 300)*

45 IAC 10-4-13 Display of license

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-414

Sec. 13. A license or a reasonable facsimile thereof issued to the licensee by the administrator shall be prominently displayed by a licensed special fuel dealer at each place in Indiana where the licensee is engaged in business. *(Department of State Revenue; Reg 6-6-2.1-414(010); filed Jan 3, 1983, 2:29 pm: 6 IR 301; filed Apr 30, 1986, 3:34 pm: 9 IR 2182)*

45 IAC 10-4-14 Cancellation of user's or dealer's license

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1; IC 6-8.1-5-4

Sec. 14. Except as otherwise provided, the administrator may, after a hearing, cancel a license issued to a special fuel user or special fuel dealer if either:

(1) files a false monthly report of the information required by this chapter *[45 IAC 10]*; or

(2) fails or refuses to file a monthly report, required by this chapter *[45 IAC 10]*; or

(3) is determined to be operating illegally; or

(4) fails or refuses to pay the full amount of the tax imposed by this chapter *[45 IAC 10]* on or before the due date established by IC 6-6-2.1-501 and IC 6-6-2.1-503; or

(5) fails or refuses to comply with the record keeping requirements or fails or refuses to allow inspection of his records or fails or refuses to furnish copies of any federal returns that he has filed as provided by IC 6-8.1-5-4; or

(6) knowingly breaks the seal on a pump sealed as ordered by the administrator pursuant to IC 6-6-2.1-1007 and IC 6-6-2.1-1011.

(Department of State Revenue; Reg 6-6-2.1-415(010); filed Jan 3, 1983, 2:29 pm: 6 IR 301; filed Apr 30, 1986, 3:34 pm: 9 IR 2182)

45 IAC 10-4-15 Cancellation of dealer's license

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5-7-2; IC 6-6-2.1-505; IC 6-6-2.1-701

Sec. 15. The administrator may, after a hearing, cancel a license issued to a licensed special fuel dealer if the dealer:

(1) collects the taxes imposed by this chapter *[45 IAC 10]* from a special fuel user or another special fuel dealer without an authorized agreement under IC 6-6-2.1-505;

(2) delivers special fuel into the taxable storage facility of a special fuel user or special fuel dealer and fails to notify the department in writing of that purchaser's name or provide any other information reasonably requested by the administrator regarding the purchaser as required by IC 6-6-2.1-701(c);

(3) fails or refuses to display the total price per unit on fuel dispensed from a metered pump or advertises that fuel at a price different from the price required to be displayed on the metered pump as provided for in IC 6-2.5-7-2.

(Department of State Revenue; Reg 6-6-2.1-415(020); filed Jan 3, 1983, 2:29 pm: 6 IR 301; errata, 6 IR 1250; filed Apr 30, 1986, 3:34 pm: 9 IR 2183)

45 IAC 10-4-16 Cancellation of license on licensee's request; requisites

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 16. (a) Upon written request to the administrator by the licensee, the administrator may cancel a license effective sixty (60) days from the date of receipt of the written request.

(b) The administrator may, prior or subsequent to cancelling a license, make any necessary investigation to determine the amount of tax, penalty, and interest which has not been paid by the licensee to the administrator.

(c) A person whose license has been cancelled must retain books and records for a period of at least three (3) years plus the current year after the effective date of cancellation. A person must allow inspection of the books, records, and returns by the administrator or its authorized agents at all reasonable times during this period. *(Department of State Revenue; Reg 6-6-2.1-*

416(010); filed Jan 3, 1983, 2:29 pm: 6 IR 301)

45 IAC 10-4-17 Cancellation of fuel user's and dealer's license; inactivity

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 17. The administrator may, upon determining that a licensed special fuel dealer or licensed special fuel user has not engaged in that business for a period of six (6) months, and is no longer engaged in that business, cancel the license by giving a sixty (60) day notice mailed to the person's last known address. *(Department of State Revenue; Reg 6-6-2.1-417(010); filed Jan 3, 1983, 2:29 pm: 6 IR 301)*

45 IAC 10-4-18 Notice of license cancellation

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-415

Sec. 18. (a) For purposes of IC 6-6-2.1-415, the licensee shall be given at least fifteen days notice of the hearing and proposed cancellation by:

(1) registered mail;

(2) at his last known address.

(b) The licensee may appear at the time and place given in the notice to show cause why his license should not be cancelled. *(Department of State Revenue; Reg 6-6-2.1-415(030); filed Apr 30, 1986, 3:34 pm: 9 IR 2183)*

45 IAC 10-4-19 Cancellation of bond; release of surety

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-419

Sec. 19. (a) The surety of a licensed special fuel user or a licensed special fuel dealer may cancel a bond issued to a licensed special fuel user or a licensed special fuel dealer upon notifying the administrator.

(b) The cancellation shall be effective sixty (60) days after written notice is received by the administrator.

(c) The release does not affect any liability accruing before expiration of the sixty (60) day period. *(Department of State Revenue; Reg 6-6-2.1-419(a)(010); filed Apr 30, 1986, 3:34 pm: 9 IR 2183)*

45 IAC 10-4-20 Notice of bond cancellation; replacement bond

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-408

Sec. 20. (a) Upon receiving notice of a surety's cancellation of a bond issued to a licensee, the administrator shall notify the licensed special fuel user or licensed special fuel dealer that the surety furnishing the bond has requested release.

(b) The licensed special fuel user or licensed special fuel dealer must file with the administrator a replacement bond which meets the requirements of IC 6-6-2.1-408, within the sixty (60) day period (see 45 IAC 10-4-19); or

(c) The administrator shall cancel the user or dealer's license. *(Department of State Revenue; Reg 6-6-2.1-419(b)(010); filed Apr 30, 1986, 3:34 pm: 9 IR 2183)*

Rule 5. Monthly Reports; Payment of Tax

45 IAC 10-5-1 Monthly reports by users; filing requirements (Repealed)

Sec. 1. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-5-2 Due date of user's monthly report (Repealed)

Sec. 2. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-5-3 User's monthly tax payment (Repealed)

Sec. 3. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-5-4 Monthly reports by dealers; filing requirements (Repealed)

Sec. 4. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-5-5 Monthly reports by dealers; due date (Repealed)

Sec. 5. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-5-6 Monthly reports by dealers; mileage factor
Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 6. A licensed special fuel dealer who delivers special fuel by tank car, tank truck, transport unit or other similar motor vehicle which has a common reservoir for the dispensing and consumption of special fuel, must, if the licensed special fuel dealer is unable to precisely determine the amount of special fuel consumed by such vehicle, compute special fuel tax liability on the basis that one (1) gallon of special fuel was placed into the fuel supply tank of such motor vehicle per every four (4) miles traveled by such vehicle. *(Department of State Revenue; Reg 6-6-2.1-503(030); filed Jan 3, 1983, 2:29 pm: 6 IR 302)*

45 IAC 10-5-7 Monthly payment by dealers; collection allowances
Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-504

Sec. 7. (a) Upon filing each monthly report, a licensed special fuel dealer is required to remit to the administrator an amount equal to the special fuel tax liability accrued during the preceding calendar month.

(b) In order to compensate a licensed special fuel dealer for collecting, reporting and remitting the special fuel tax, a licensed special fuel dealer is entitled to deduct, if the tax is timely remitted, a collection allowance.

(c) The collection allowance equals one and six-tenths percent (1.6%) of the licensed special fuel dealer's special fuel tax liability accrued during the preceding calendar month for:

(1) selling and delivering, or selling and causing to be delivered, special fuel into the fuel supply tank of motor vehicles other than motor vehicles owned by the licensed special fuel dealer;

(2) selling and delivering, or selling and causing to be delivered, special fuel into the taxable storage facility of an authorized unlicensed user;

(3) selling and delivering, or selling and causing to be delivered, special fuel into the taxable storage facility of an authorized unlicensed dealer;

(d) A licensed special fuel dealer is not entitled to the one and six-tenths percent (1.6%) collection allowance for placing special fuel into motor vehicles owned by the licensed special fuel dealer, and therefore the licensed special fuel dealer must remit one hundred percent (100%) of the special fuel tax imposed upon placing special fuel into such motor vehicles.

–EXAMPLE–

During March, Company A, a licensed special fuel dealer, placed 50 gallons of special fuel into a company owned diesel powered truck, sold 300 gallons of special fuel to various customers through a metered pump into the fuel supply tank of motor vehicles, and sold 100 gallons of special fuel into a taxable storage facility of an authorized unlicensed dealer. In April, the licensed special fuel dealer is entitled to retain one and six-tenths percent (1.6%) of the tax collected on the 400 gallons of special fuel sold to others, if timely remitted, but must remit one hundred percent (100%) of the special fuel tax imposed upon placing the special fuel into the fuel supply tank of the company's motor vehicle. *(Department of State Revenue; Reg 6-6-2.1-504(010); filed Jan 3, 1983, 2:29 pm: 6 IR 302; errata, 6 IR 1250; filed Apr 30, 1986, 3:34 pm: 9 IR 2184)*

45 IAC 10-5-8 Payment of tax by authorized unlicensed user (Repealed)

Sec. 8. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-5-9 Payment of tax by authorized unlicensed dealer (Repealed)

Sec. 9. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-5-10 Payment of tax; improper collection

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 10. (a) A licensed special fuel dealer shall not collect special fuel tax from a purchaser upon placing special fuel into a special fuel storage facility unless the licensed special fuel dealer and purchaser have entered into a Special Fuel Tax Collection Agreement.

(b) A licensed special fuel dealer who improperly collects special fuel tax is deemed to be operating illegally and is subject to license cancellation. *(Department of State Revenue; Reg 6-6-2.1-505(030); filed Jan 3, 1983, 2:29 pm: 6 IR 304)*

45 IAC 10-5-11 Collection agreement; authorization; effective date

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-505

Sec. 11. (a) Upon approval, the administrator shall notify in writing the persons who are parties to the Special Fuel Tax Collection Agreement of the authorization granted.

(b) The authorization is effective on the date specified by the administrator. *(Department of State Revenue; Reg 6-6-2.1-505(040); filed Jan 3, 1983, 2:29 pm: 6 IR 304; filed Apr 30, 1986, 3:34 pm: 9 IR 2186)*

45 IAC 10-5-12 Collection agreement; termination

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-505

Sec. 12. Any party to a Special Fuel Tax Collection Agreement may terminate the agreement by giving thirty (30) days written notice to the other parties. *(Department of State Revenue; Reg 6-6-2.1-505(050); filed Jan 3, 1983, 2:29 pm: 6 IR 304; filed Apr 30, 1986, 3:34 pm: 9 IR 2186)*

45 IAC 10-5-13 Payment of tax; authorized unlicensed user's separate special fuel tax collection agreements (Repealed)

Sec. 13. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-5-14 Authorized unlicensed dealer's separate special fuel tax collection agreements; payment of tax (Repealed)

Sec. 14. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 10-5-15 Payment of tax; termination of special fuel tax collection agreement upon a licensed special fuel dealer's license being cancelled

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 15. (a) Any Special Fuel Tax Collection Agreement to which a licensed special fuel dealer is a party is automatically

terminated upon the licensed special fuel dealer's license being cancelled.

(b) Any person who is a party to a Special Fuel Tax Collection Agreement with a special fuel dealer whose license has been cancelled shall be notified in writing by the administrator of its termination. *(Department of State Revenue; Reg 6-6-2.1-505(080); filed Jan 3, 1983, 2:29 pm: 6 IR 305)*

45 IAC 10-5-16 Users subject to special fuel tax collection agreement; final report of gallonage on hand; payment of tax

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 16. (a) In addition to paying the tax liability accrued during the preceding month, a licensed special fuel user who becomes an authorized unlicensed user must pay, upon the filing of the licensee's last report, the special fuel tax imposed upon the number of gallons of special fuel on hand in the taxable storage facility at the time the Special Fuel Tax Collection Agreement becomes effective.

(b) In the event the licensee has previously paid special fuel tax on such gallons, the licensee may deduct such previously paid tax from the imposed tax liability. *(Department of State Revenue; Reg 6-6-2.1-506(010); filed Jan 3, 1983, 2:29 pm: 6 IR 305)*

45 IAC 10-5-17 Dealers subject to special fuel tax collection agreement; final report of gallonage on hand; payment of tax

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 17. (a) In addition to paying the tax liability accrued during the preceding month, a licensed special fuel dealer who becomes an authorized unlicensed dealer must pay, upon the filing of the licensee's last report, the special fuel tax imposed upon the number of gallons of special fuel on hand in the taxable storage facility at the time the Special Fuel Tax Collection Agreement becomes effective.

(b) In the event the licensee has previously paid special fuel tax on such gallons, the licensee may deduct such previously paid tax from the imposed tax liability.

–EXAMPLE–

(1) On July 31, a licensed special fuel dealer has 2,000 gallons of special fuel on hand in his storage facility. On August 1, the licensed special fuel dealer enters into a Special Fuel Tax Collection Agreement with his supplier, and the Special Fuel Tax Collection Agreement is approved by the administrator. Upon the filing of the last report, the licensed special fuel dealer, who as of August 1 is an authorized unlicensed dealer, must pay to the administrator an amount equal to the special fuel tax liability for July plus the special fuel tax imposed upon the 2,000 gallons of special fuel on hand at the time the Special Fuel Tax Collection Agreement becomes effective.

(2) Same facts as in (1) except that the licensee had previously paid special fuel tax on the 2,000 gallons. In this instance, the licensee would not owe special fuel tax on the 2,000 gallons remaining on hand at the time the Special Fuel Tax Collection Agreement becomes effective, since such tax was previously paid. *(Department of State Revenue; Reg 6-6-2.1-506(020); filed Jan 3, 1983, 2:29 pm: 6 IR 305; errata, 6 IR 1250)*

45 IAC 10-5-18 Special fuel tax collection agreement; dealer as a party

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 18. A licensed special fuel dealer who is a party to a Special Fuel Tax Collection Agreement shall report and remit the tax collected as a result of the agreement as provided by sections 503 and 504 of this chapter *[45 IAC 10-5-4 through 45 IAC 10-5-7]. (Department of State Revenue; Reg 6-6-2.1-507(010); filed Jan 3, 1983, 2:29 pm: 6 IR 306)*

45 IAC 10-5-19 Discontinuance of licensee's business

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-414; IC 6-6-2.1-518

Sec. 19. (a) If a licensee ceases to do business in Indiana, the licensee must give written notice to the administrator at least fifteen (15) days before discontinuance.

(b) Any tax, penalty and interest which was accrued under this chapter *[45 IAC 10]* is due and payable at the time of discontinuance.

(c) A licensee who fails to notify the administrator as provided by this chapter *[45 IAC 10]* is presumed to be operating in the business for which the license was issued, and therefore is subject to the reporting and remitting requirements of this chapter *[45 IAC 10]*.

(d) The licensee shall surrender his license certificate to the administrator and destroy all identification issued by the department under IC 6-6-2.1-414. *(Department of State Revenue; Reg 6-6-2.1-518(010); filed Jan 3, 1983, 2:29 pm: 6 IR 306; filed Apr 30, 1986, 3:34 pm: 9 IR 2186)*

Rule 6. Refund of Tax

45 IAC 10-6-1 Refund of tax or penalty erroneously paid

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 1. Upon determining that a person has erroneously paid any tax and/or penalty imposed by this chapter *[45 IAC 10]*, and upon receiving a claim for refund as prescribed in section 802 *[45 IAC 10-6-2]*, the administrator may refund the payment. *(Department of State Revenue; Reg 6-6-2.1-801(010); filed Jan 3, 1983, 2:29 pm: 6 IR 306)*

45 IAC 10-6-2 Refund claim; limitations

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1; IC 6-8.1

Sec. 2. (a) Any claim for refund filed under this chapter *[45 IAC 10]* must be in a form prescribed by the administrator, must describe in detail the reason the refund should be allowed, and must be filed within one (1) year after the date of payment of the erroneously collected tax.

(b) To apply for a refund, the prescribed form must be accurately completed, signed, and returned to the Indiana Department of Revenue, Motor Fuel Tax Division, Room #218B, State Office Building, Indianapolis, Indiana. A detailed description of all information pertaining to the request must be submitted. Any evidence such as receipts, bills of sale, monthly reports, invoices or other matters pertaining to the requested refund should be returned with the form. *(Department of State Revenue; Reg 6-6-2.1-802(010); filed Jan 3, 1983, 2:29 pm: 6 IR 306)*

45 IAC 10-6-3 Loss or destruction of fuel; refund of tax paid

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 3. (a) An authorized unlicensed user or an authorized unlicensed dealer who has purchased or acquired special fuel in Indiana and has paid the tax imposed by this chapter *[45 IAC 10]* on that fuel is entitled to a refund (without interest) of the amount of tax paid on special fuel in excess of one hundred (100) gallons which is lost or destroyed except by evaporation, or shrinkage, while the authorized unlicensed user or authorized unlicensed dealer owns the fuel.

(b) To obtain the refund, the authorized unlicensed user or authorized unlicensed dealer must:

(1) within thirty (30) days after loss, notify the administrator in writing of the amount of special fuel lost or destroyed; and

(2) within forty (40) days after notice is given, file with the administrator a sworn affidavit by the person having custody of the special fuel at the time of loss or destruction setting forth in full the circumstances and amount of the loss or destruction and any other information the administrator may require.

(c) The administrator may make any necessary investigation to verify the claimant's loss. *(Department of State Revenue; Reg 6-6-2.1-803(010); filed Jan 3, 1983, 2:29 pm: 6 IR 306)*

45 IAC 10-6-4 In case of loss, destruction; record keeping by licensee, authorized unlicensed dealer and user

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 4. (a) For audit or investigative purposes, adequate records should be maintained whereby special fuel is acquired or purchased by a licensee, authorized unlicensed user, or authorized unlicensed dealer in Indiana, and is lost or destroyed in excess of one hundred (100) gallons, except by evaporation, or shrinkage.

(b) Adequate records will include such documents as insurance claims, police records and sworn affidavits. *(Department of State Revenue; Reg 6-6-2.1-803(020); filed Jan 3, 1983, 2:29 pm: 6 IR 307)*

45 IAC 10-6-5 Refund of tax paid by mistake; authorized unlicensed user and dealer

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 5. An authorized unlicensed user or authorized unlicensed dealer is entitled to a refund without interest for the amount of any special fuel tax which:

(1) due to a clerical error, was erroneously paid to the authorized unlicensed user's or authorized unlicensed dealer's supplier; and

(2) has been remitted to the administrator by the supplier.

(Department of State Revenue; Reg 6-6-2.1-804(010); filed Jan 3, 1983, 2:29 pm: 6 IR 307; errata, 6 IR 1250)

45 IAC 10-6-6 Refunds restricted

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 6. (a) An authorized unlicensed user or authorized unlicensed dealer may only claim a refund for:

(1) loss or destruction of special fuel as provided in section 803 *[45 IAC 10-6-3 and 45 IAC 10-6-4]*; and

(2) clerical error as provided in section 804 *[45 IAC 10-6-5]*.

(b) An authorized unlicensed user or authorized unlicensed dealer may not file a claim for refund for special fuel tax paid on special fuel placed into the authorized unlicensed user's or authorized unlicensed dealer's taxable storage facility which is subsequently withdrawn and used for an exempt or nontaxable purpose.

–EXAMPLE–

(1) Special fuel is sold from the authorized unlicensed dealer's taxable storage facility into the refrigeration unit of a truck. Although a licensed special fuel dealer may sell such fuel tax exempt, an authorized unlicensed dealer must charge special fuel tax on the transaction. However, the fuel purchaser may file a claim pursuant to the provisions set forth in Indiana Code 6-6-2.1-801, and Indiana Code 6-6-2.1-802 for refund of the tax paid to the authorized unlicensed dealer.

(2) Special fuel is withdrawn from an authorized unlicensed user's taxable storage facility and placed into the fuel supply tank of a farm tractor owned by the authorized unlicensed user. Although the tractor is not a motor vehicle as defined in section 103 *[45 IAC 10-1]*, the authorized unlicensed user may not file a claim for refund for tax that he paid previously to his supplier on such fuel.

(Department of State Revenue; Reg 6-6-2.1-805(010); filed Jan 3, 1983, 2:29 pm: 6 IR 307)

Rule 7. Tax Evasion; Sealing Pumps

45 IAC 10-7-1 Reward for tax evasion report

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 1. (a) The administrator may pay a reward to a person, except a state officer, employee, former employee or relative thereof, who notifies the administrator in writing of another person who has failed to pay the tax imposed by this chapter *[45 IAC 10]*.

(b) The reward may not exceed ten percent (10%) of the delinquent tax, penalty, and interest ultimately collected from the

other person as a result of the notification. *(Department of State Revenue; Reg 6-6-2.1-1006(010); filed Jan 3, 1983, 2:29 pm: 6 IR 307)*

45 IAC 10-7-2 Sealing of pump; impoundment of vehicle or tank

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-1007

Sec. 2. (a) The administrator may seal a special fuel tank or pump or impound any vehicle or tank that does not have a sealable pump if:

(1) a licensed special fuel user or licensed special fuel dealer becomes delinquent in payment of any amount due under this chapter *[45 IAC 10]*;

(2) there is evidence that the revenue of a licensed special fuel user or licensed special fuel dealer is in jeopardy;

(3) a special fuel dealer or special fuel user is operating without the license required by this chapter *[45 IAC 10]*; or

(4) an authorized unlicensed user or an authorized unlicensed dealer is operating outside the authority granted by the administrator.

(b) Upon the administrator's sealing of a special fuel tank, a person is prohibited from withdrawing special fuel from the sealed tank. Furthermore, a person is prohibited from subsequently purchasing special fuel for bulk storage without the written consent of the administrator.

(c) The pumps may be sealed until all reports are filed, and the fees, interest, tax and penalties imposed by this chapter *[45 IAC 10]* are paid.

(d) Seals may only be removed by an authorized employee of the motor fuel tax division or by a person receiving written approval from the administrator. *(Department of State Revenue; Reg 6-6-2.1-1007(010); filed Jan 3, 1983, 2:29 pm: 6 IR 307; filed Apr 30, 1986, 3:34 pm: 9 IR 2186)*

45 IAC 10-7-3 Gallonage totalizers

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-1007; IC 6-6-2.1-1011

Sec. 3. (a) Special fuel dealers shall allow the administrator to seal gallonage totalizers of metered pumps operated by or on behalf of the special fuel dealer.

(b) If the administrator determines that a metered pump operated by or on behalf of a special fuel dealer is without an effectively sealable gallonage totalizer, the special fuel dealer shall, at the administrator's request:

(1) adapt the pump to the administrator's specifications so that it may be effectively sealed; or

(2) replace, in whole or in part, the pump, with a pump which employs an effectively sealable gallonage totalizer, as determined by the administrator.

(c) A special fuel dealer's failure to comply with the administrator's request made under IC 6-6-2.1-1011 shall be considered evidence that the revenue of the special fuel dealer is in jeopardy, upon which the administrator may seal the pumps of the special fuel dealer pursuant to IC 6-6-2.1-1007.

(d) No person shall replace or change the totalizer on a metered special fuel pump without an authorized employee of the motor fuel tax division present, except:

(1) upon malfunction or breakage of the totalizer and;

(2) written affidavit executed by the person who made the change or replacement and stating therein:

(A) the date and time of the change or replacement; and

(B) the reason for the change or replacement; and

(C) the old and new readings on the totalizer; and

(D) any other information which the administrator may reasonably request;

(3) by a person or company who is registered or registers with the administrator on a form prescribed by the administrator; or

(4) by the owner or operator of the metered pump.

(Department of State Revenue; Reg 6-6-2.1-1011(010); filed Apr 30, 1986, 3:34 pm: 9 IR 2187)

Rule 8. Display of Facility

45 IAC 10-8-1 Storage facility of authorized unlicensed user or dealer; display

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 1. (a) An authorized unlicensed user or authorized unlicensed dealer shall prominently display the words "taxable fuel" on the taxable storage facility to which the authorized unlicensed user or authorized unlicensed dealer has exclusive access.

(b) The words "taxable fuel" must be marked near the opening of the facility into which the special fuel is placed. If the storage facility is underground, the words must be marked on the cap of the intake pipe into which the special fuel is placed. *(Department of State Revenue; Reg 6-6-2.1-1106(010); filed Jan 3, 1983, 2:29 pm: 6 IR 308)*

Rule 9. Intentional Violation of Rules

45 IAC 10-9-1 Intentional failure to pay tax; offense

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 1. A licensed special fuel dealer who knowingly fails to pay the tax to the administrator as required by section 504 of this chapter *[45 IAC 10-5-7]* commits a Class D felony. *(Department of State Revenue; Reg 6-6-2.1-1201(010); filed Jan 3, 1983, 2:29 pm: 6 IR 308)*

45 IAC 10-9-2 Intentional breakage of seal

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-1007; IC 6-6-2.1-1011

Sec. 2. A person not authorized by IC 6-6-2.1 who knowingly:

(1) breaks a seal on a special fuel pump or tank; or

(2) withdraws or removes special fuel from a sealed special fuel pump or tank; or

(3) fails or refuses to report meter readings on a special fuel pump or tank

sealed under IC 6-6-2.1-1007 or IC 6-6-2.1-1011, commits a Class D felony. *(Department of State Revenue; Reg 6-6-2.1-1207(010); filed Jan 3, 1983, 2:29 pm: 6 IR 308; filed Apr 30, 1986, 3:34 pm: 9 IR 2187)*

45 IAC 10-9-3 Reckless or intentional violation; offense

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 3. (a) A person commits a Class B misdemeanor if a person:

(1) recklessly fails to file a report, return, or statement required by this chapter *[45 IAC 10]*;

(2) knowingly makes a false statement in a return or report to the administrator, or in connection with an application for the refund of any tax claimed to have been erroneously paid under this chapter *[45 IAC 10]*;

(3) knowingly collects a refund or pays a refund of tax on fuel actually placed into the fuel supply tank of a motor vehicle; or

(4) knowingly acts as a special fuel user, a special fuel dealer, fuel oil distributor, authorized unlicensed user, or authorized unlicensed dealer without a license or authorization.

(b) A person who commits one of the aforementioned offenses with the intent to evade the tax imposed by this chapter *[45 IAC 10]* or to defraud this state commits a Class D felony.

(c) Each day during which a person acts as a special fuel user, a special fuel dealer, or a fuel oil distributor without a license constitutes a separate offense. *(Department of State Revenue; Reg 6-6-2.1-1208(010); filed Jan 3, 1983, 2:29 pm: 6 IR 308)*

45 IAC 10-9-4 Violation; offenses

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 4. (a) Except as provided in section 1208 of this chapter *[45 IAC 10-9-3]*, a person who violates a provision of this chapter *[45 IAC 10]* commits a Class C infraction.

(b) A person who commits such offenses with the intent to evade the tax imposed by this chapter *[45 IAC 10]* and to defraud the state commits a Class D felony. *(Department of State Revenue; Reg 6-6-2.1-1212(010); filed Jan 3, 1983, 2:29 pm: 6 IR 308)*

45 IAC 10-9-5 Failure to collect tax from authorized unlicensed users or dealers; penalties

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1

Sec. 5. (a) A licensed special fuel dealer who knowingly delivers special fuel into the taxable storage facility of an authorized unlicensed user or authorized unlicensed dealer with whom a Special Fuel Tax Collection Agreement has been approved, and fails to collect the tax imposed by this chapter *[45 IAC 10]* on that fuel, is subject to a penalty equal to ten percent (10%) of the tax due on that special fuel in addition to the tax and other penalties imposed.

(b) A licensed special fuel dealer who violates paragraph (a) of this regulation *[this section]* with respect to more than one delivery to the same authorized unlicensed user or authorized unlicensed dealer is subject to a fifty percent (50%) penalty of the total amount of the deficiency of the tax in addition to the tax and other penalties imposed. *(Department of State Revenue; Reg 6-6-2.1-1213(010); filed Jan 3, 1983, 2:29 pm: 6 IR 309)*

45 IAC 10-9-6 Display of tax rate

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-1214

Sec. 6. A special fuel dealer shall state the rate of tax separately from the price of the special fuel on all sales or delivery slips, bills, invoices, and statements that indicate the price of special fuel except when the special fuel is sold through a metered pump. *(Department of State Revenue; Reg 6-6-2.1-1214(010); filed Apr 30, 1986, 3:34 pm: 9 IR 2187)*

Rule 10. Delivery Reports; Collection of Tax

45 IAC 10-10-1 Report of deliveries

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-604

Sec. 1. (a) Reports of all special fuel deliveries in Indiana shall be made, under oath, to the administrator by:

(1) common, contract, or private carriers transporting special fuel in interstate or intrastate commerce;

(2) persons transporting special fuel in any manner from outside Indiana to a point in Indiana other than a refinery or terminal;

(3) persons engaged in transporting special fuel in Indiana for others.

(b) The reports of all deliveries of special fuel in Indiana shall be made under oath.

(c) The reports of all deliveries of special fuel in Indiana shall be made monthly on forms prescribed by the adminstrator.

(d) The reports of all deliveries of special fuel in Indiana shall disclose:

(1) the name and address of the person to whom deliveries of special fuel have actually been made; and

(2) the name and address of the originally named consignee, if special fuel has been delivered to a person other than the original consignee; and

(3) the point of origin, point of delivery, date of delivery, number and initials of each tank car, and number of gallons contained in each car, if the special fuel has been shipped by rail; and

(4) the name of the product and number of gallons contained in the boat, barge, or vessel, if the special fuel has been shipped by water; and

(5) the license plate number and number of gallons contained in each tank truck, if the special fuel has been shipped by motor

truck; or

(6) the manner in which the special fuel has been delivered if the delivery was other than described in this section; and

(7) such additional information relating to special fuel shipments as the administrator may reasonably require.

(Department of State Revenue; Reg 6-6-2.1-604(010); filed Apr 30, 1986, 3:34 pm: 9 IR 2188)

45 IAC 10-10-2 Collection and payment by dealer

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-701

Sec. 2. (a) The tax on special fuel sold and delivered in Indiana into:

(1) the fuel supply tanks of a motor vehicle; or

(2) the taxable storage facility of an authorized unlicensed user or authorized unlicensed special fuel dealer; or

(3) sold by a licensed special fuel dealer through a self service pump;

shall be collected from the purchaser and be paid monthly to the administrator.

(b) The special fuel dealer shall hold the tax money in trust for the state until it is paid to the administrator.

(c) Every officer, employee, or member of a partnership or corporation who is under a duty to remit the tax is personally liable for the tax. *(Department of State Revenue; Reg 6-6-2.1-701(010); filed Apr 30, 1986, 3:34 pm: 9 IR 2188)*

45 IAC 10-10-3 Payment by user

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-701

Sec. 3. The tax imposed on special fuel delivered in Indiana into the storage of a licensed special fuel user or acquired by a licensed special fuel user for a purpose other than:

(1) delivery into the fuel supply tank of a motor vehicle by a licensed special fuel dealer;

(2) delivery into the taxable storage facility of an authorized unlicensed user by a licensed special fuel dealer; or

(3) delivery through a self service pump of a licensed special fuel user;

shall be paid monthly by the user to the administrator after the special fuel has been used. *(Department of State Revenue; Reg 6-6-2.1-701(020); filed Apr 30, 1986, 3:34 pm: 9 IR 2188)*

45 IAC 10-10-4 Notice of delivery by dealer

Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1-701

Sec. 4. A special fuel dealer who delivers special fuel into the taxable storage facility of a special fuel user or special fuel dealer shall notify the department in writing:

(1) of the purchaser's name; and

(2) any other information which the administrator reasonably requests;

at the time and in the name prescribed by the administrator. *(Department of State Revenue; Reg 6-6-2.1-701(030); filed Apr 30, 1986, 3:34 pm: 9 IR 2188)*

ARTICLE 11. HAZARDOUS WASTE LAND DISPOSAL TAX

Rule 1. Definitions

45 IAC 11-1-1 "Rules of construction" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-6.6-1

Sec. 1. For purposes of this chapter *[45 IAC 11]*, the singular form of any noun shall include the plural, and the plural includes

the singular, where appropriate. *(Department of State Revenue; Reg 6-6-6.6-1(010); filed Sep 12, 1983, 2:26 pm: 6 IR 1898)*

45 IAC 11-1-2 "Board" defined
Authority: IC 6-8.1-3-3
Affected: IC 6-6-6.6-1

Sec. 2. For purposes of this chapter *[45 IAC 11]*, the term "board" means the environmental management board established under Indiana Code 13-7-2 *[IC 13-7 was repealed by P.L.1-1996, SECTION 99, effective July 1, 1996.]*. *(Department of State Revenue; Reg 6-6-6.6-1(020); filed Sep 12, 1983, 2:26 pm: 6 IR 1898)*

45 IAC 11-1-3 "Department" defined
Authority: IC 6-8.1-3-3
Affected: IC 6-6-6.6-1

Sec. 3. For purposes of this chapter *[45 IAC 11]*, the term "department" means the Indiana department of state revenue. *(Department of State Revenue; Reg 6-6-6.6-1(030); filed Sep 12, 1983, 2:26 pm: 6 IR 1898)*

45 IAC 11-1-4 "Disposal facility" defined
Authority: IC 6-8.1-3-3
Affected: IC 6-6-6.6-1

Sec. 4. For purposes of this chapter *[45 IAC 11]*, the term "disposal facility" means a site where hazardous wastes are disposed of, including facilities associated with, within, or adjacent to facilities generating the waste. *(Department of State Revenue; Reg 6-6-6.6-1(040); filed Sep 12, 1983, 2:26 pm: 6 IR 1898)*

45 IAC 11-1-5 "Ton" defined
Authority: IC 6-8.1-3-3
Affected: IC 6-6-6.6-1

Sec. 5. For purposes of this chapter *[45 IAC 11]*, the term "ton" means a ton as defined in Indiana Code 6-6-6.6-1. *(Department of State Revenue; Reg 6-6-6.6-1(050); filed Sep 12, 1983, 2:26 pm: 6 IR 1898)*

45 IAC 11-1-6 "Hazardous waste" defined
Authority: IC 6-8.1-3-3
Affected: IC 6-6-6.6-1

Sec. 6. For purposes of this chapter *[45 IAC 11]*, the term "hazardous waste" has the same meaning as in Indiana Code 13-7-1-2(17) *[Repealed by P.L.143-1985, SECTION 207]*. and includes a waste determined to be hazardous under Indiana Code 13-7-8.5-3(b) or (c). *(Department of State Revenue; Reg 6-6-6.6-1(060); filed Sep 12, 1983, 2:26 pm: 6 IR 1898)*

45 IAC 11-1-7 "Person" defined
Authority: IC 6-8.1-3-3
Affected: IC 6-6-6.6-1

Sec. 7. For purposes of this chapter *[45 IAC 11]*, the term "person" means any natural person, partnership, corporation, joint venture, firm, association, a representative appointed by the court, or the state, or its political subdivision, or other legal entity; however, the United States Government and its agencies, and its instrumentalities shall not be considered persons unless their inclusion is permitted under the Constitution and laws of the United States. *(Department of State Revenue; Reg 6-6-6.6-1(070); filed Sep 12, 1983, 2:26 pm: 6 IR 1898)*

45 IAC 11-1-8 "Disposal" defined
Authority: IC 6-8.1-3-3
Affected: IC 6-6-6.6-1

Sec. 8. For purposes of this chapter *[45 IAC 11]*, the term "disposal" means the discharge, deposit, injection, spilling, leaking, or placing of hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof has entered the environment or has been emitted into the air or discharged into any waters, including ground waters. *(Department of State Revenue; Reg 6-6-6.6-1(080); filed Sep 12, 1983, 2:26 pm: 6 IR 1898)*

45 IAC 11-1-9 "Storage" defined
Authority: IC 6-8.1-3-3
Affected: IC 6-6-6.6-1

Sec. 9. For purposes of this chapter *[45 IAC 11]*, the term "storage" means storage as defined in Indiana Code 13-7-1-2(21) *[Repealed by P.L.143-1985, SECTION 207.]. (Department of State Revenue; Reg 6-6-6.6-1(090); filed Sep 12, 1983, 2:26 pm: 6 IR 1898)*

45 IAC 11-1-10 "Treatment" defined
Authority: IC 6-8.1-3-3
Affected: IC 6-6-6.6-1

Sec. 10. For purposes of this chapter *[45 IAC 11]*, the term "treatment" means treatment as defined in Indiana Code 13-7-1-2(22) *[Repealed by P.L.143-1985, SECTION 207.]. (Department of State Revenue; Reg 6-6-6.6-1(100); filed Sep 12, 1983, 2:26 pm: 6 IR 1899)*

Rule 2. Imposition of Tax

45 IAC 11-2-1 Taxable event
Authority: IC 6-8.1-3-3
Affected: IC 6-6-6.6-2

Sec. 1. (a) A tax known as the hazardous waste land disposal tax is imposed upon the disposal of any substance which is a hazardous waste, as defined in Indiana regulation 6-6-6.6-1(a)(060) *[45 IAC 11-1-6]*, at a disposal facility in Indiana at the time of its disposal.

(b) The disposal of a substance which is a hazardous waste, as defined in Indiana regulations 6-6-6.6-1(a)(060) *[45 IAC 11-1-6]*, at the time of its disposal is subject to the tax imposed by this chapter *[45 IAC 11]* even in those instances where such a substance ceases to be considered to be a hazardous waste, as defined in Indiana regulation 6-6-6.6-1(a)(060) *[45 IAC 11-1-6]*, at a time subsequent to disposal.

(c) The disposal of a substance which is not a hazardous waste, as defined in Indiana regulation 6-6-6.6-1(a)(060) *[45 IAC 11-1-6]*, at the time of its disposal is not subject to the tax imposed by this chapter *[45 IAC 11]* even in those instances where such a substance is considered to be hazardous waste, as defined in Indiana regulation 6-6-6.6-1(a)(060) *[45 IAC 11-1-6]*, at a time subsequent to disposal.

(d) The tax imposed by this chapter *[45 IAC 11]* does not apply to the treatment or storage of hazardous waste in a disposal facility. *(Department of State Revenue; Reg 6-6-6.6-2(a)(010); filed Sep 12, 1983, 2:26 pm: 6 IR 1899)*

45 IAC 11-2-2 Remittance of tax by person operating disposal facility
Authority: IC 6-8.1-3-3
Affected: IC 6-6-6.6-2

Sec. 2. Every person operating a disposal facility in Indiana shall remit to the department the tax imposed by this chapter *[45 IAC 11]. (Department of State Revenue; Reg 6-6-6.6-2(a)(020); filed Sep 12, 1983, 2:26 pm: 6 IR 1899)*

45 IAC 11-2-3 Rate of tax
Authority: IC 6-8.1-3-3
Affected: IC 6-6-6.6-2

Sec. 3. The tax imposed by this chapter *[45 IAC 11]* is imposed at the rate of one dollar and fifty cents ($1.50) per ton. *(Department of State Revenue; Reg 6-6-6.6-2(a)(030); filed Sep 12, 1983, 2:26 pm: 6 IR 1899)*

45 IAC 11-2-4 Quarterly payment of tax; computation
Authority: IC 6-8.1-3-3
Affected: IC 6-6-6.6-2

Sec. 4. (a) Except as provided in Indiana regulation 6-6-6.6-3(b)(010) *[45 IAC 11-3-1]*, every person operating a disposal facility in Indiana shall remit to the department the full amount of tax due for the period of the immediately preceding calendar quarter.

The tax imposed by this chapter *[45 IAC 11]* is an amount equal to the total number of tons of hazardous waste disposed of at such disposal facility during the period of the immediately preceding calendar quarter multiplied by the tax rate. *(Department of State Revenue; Reg 6-6-6.6-2(b)(010); filed Sep 12, 1983, 2:26 pm: 6 IR 1899)*

45 IAC 11-2-5 Quarterly payment of tax due; due date
Authority: IC 6-8.1-3-3
Affected: IC 6-6-6.6-2; IC 6-8.1

Sec. 5. (a) Every person operating a disposal facility in Indiana shall remit to the department the full amount of tax under this chapter *[45 IAC 11]* for the period of a calendar quarter on or before the last day of the month immediately succeeding the last day of the calendar quarter.

(b) Tax not remitted or remitted after the due date is subject to penalty and interest pursuant to the provisions set forth in Indiana Code 6-8.1. If the due date falls on a Saturday, a Sunday, a national legal holiday, or a statewide holiday, then the due date is the next succeeding day that is not a Saturday, a Sunday, or a holiday. *(Department of State Revenue; Reg 6-6-6.6-2(b)(020); filed Sep 12, 1983, 2:26 pm: 6 IR 1899)*

45 IAC 11-2-6 Persons operating disposal facilities; quarterly return
Authority: IC 6-8.1-3-3
Affected: IC 6-6-6.6-2

Sec. 6. (a) Every person operating a disposal facility in Indiana shall file with the department a return for each calendar quarter.

(b) This return must be in a form prescribed by the department and shall include any information which the department deems necessary for the proper administration of this chapter *[45 IAC 11]*.

(c) In addition to the information required under paragraph (2) *[subsection (b) of this section]*, the return which shall be filed for the period of the first quarter of each calendar year shall include a copy of the annual report which the facility operator is required to submit to the Indiana environmental management board or to the environmental protection agency for the period of the immediately preceding calendar year.

(d) The quarterly return required by this chapter *[45 IAC 11]* must be filed even if: There is no tax liability for the immediately preceding calendar quarter; or, the department has suspended collection of the tax pursuant to Indiana regulation 6-6-6.6-3(b)(010) *[45 IAC 11-3-1]*. *(Department of State Revenue; Reg 6-6-6.6-2(c)(010); filed Sep 12, 1983, 2:26 pm: 6 IR 1899)*

45 IAC 11-2-7 Persons operating disposal facilities; quarterly return; due date
Authority: IC 6-8.1-3-3
Affected: IC 6-6-6.6-2; IC 6-6-6.6-3; IC 6-8.1

Sec. 7. (a) Every person who is required under this chapter *[45 IAC 11]* to file with the department a quarterly return shall

file such return with the department on or before the last day of the month immediately succeeding the last day of the calendar quarter being reported.

(b) Returns not filed or filed after the due date are subject to penalty and interest pursuant to the provisions set forth in Indiana Code 6-8.1. If the due date falls on a Saturday, a Sunday, a national legal holiday, or a statewide holiday, then the due date is the next succeeding day that is not a Saturday, a Sunday, or a holiday. *(Department of State Revenue; Reg 6-6-6.6-2(c)(020); filed Sep 12, 1983, 2:26 pm: 6 IR 1900)*

45 IAC 11-2-8 Listed tax

Authority: IC 6-8.1-3-3
Affected: IC 6-6-6.6-2; IC 6-8.1

Sec. 8. The tax imposed by this chapter is a listed tax under Indiana Code 6-8.1. *(Department of State Revenue; Reg 6-6-6.6-2(d)(010); filed Sep 12, 1983, 2:26 pm: 6 IR 1900)*

Rule 3. Disposition of Revenue

45 IAC 11-3-1 Suspension of collection of tax

Authority: IC 6-8.1-3-3
Affected: IC 6-6-6.6-3

Sec. 1. The department shall, upon receipt of certification by the treasurer of the state that the fund established under Indiana Code 13-7-8.7 *[IC 13-7 was repealed by P.L.1-1996, SECTION 99, effective July 1, 1996.]* is at its statutory maximum amount, cease collection of the tax imposed by this chapter *[45 IAC 11]* for the calendar quarter which immediately succeeds receipt of certification. *(Department of State Revenue; Reg 6-6-6.6-3(b)(010); filed Sep 12, 1983, 2:26 pm: 6 IR 1900)*

45 IAC 11-3-2 Resumption of collection of tax

Authority: IC 6-8.1-3-3
Affected: IC 6-6-6.6-3

Sec. 2. The department shall, upon receipt of certification by the treasurer of the state that the fund established under Indiana Code 13-7-8.7 *[IC 13-7 was repealed by P.L.1-1996, SECTION 99, effective July 1, 1996.]* is at its statutory minimum amount, resume collection of the tax imposed by this chapter *[45 IAC 11]* for the calendar quarter which immediately succeeds receipt of certification. *(Department of State Revenue; Reg 6-6-6.6-3(b)(020); filed Sep 12, 1983, 2:26 pm: 6 IR 1900)*

ARTICLE 12. GASOLINE TAX

Rule 1. Definitions

45 IAC 12-1-1 "Administrator" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-103

Sec. 1. The term "administrator" shall mean the administrative head of the Indiana department of revenue, or an authorized agent thereof. *(Department of State Revenue; Reg 6-6-1.1-103(a)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2311)*

45 IAC 12-1-2 "Dealer" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-103

Sec. 2. For purposes of this chapter *[IC 6-6-1.1]*, the term "dealer" shall mean a person except a distributor engaged in the

business of selling gasoline in Indiana. *(Department of State Revenue; Reg 6-6-1.1-103(b)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2311)*

45 IAC 12-1-3 "Department" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-103

Sec. 3. Regulatory definition of "department" is used synonymously with the act *[IC 6-6-1.1-103(c)]*. *(Department of State Revenue; Reg 6-6-1.1-103(c)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2311)*

45 IAC 12-1-4 "Distributor" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-103

Sec. 4. (a) For purposes of this chapter *[IC 6-6-1.1]*, the term "distributor" shall mean a person who receives gasoline as defined in IR 6-6-1.1-103(o)(010) *[45 IAC 12-1-15]* in Indiana, and subsequently distributes by tank car, tank truck, or transport.

(b) The term "distributor" does not include the United States government, its instrumentalities, or agencies unless their inclusion is permitted under the constitution and laws of the United States. *(Department of State Revenue; Reg 6-6-1.1-103(d)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2311)*

45 IAC 12-1-5 "Licensed dealer" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-103

Sec. 5. Unless otherwise provided, the term "licensed distributor" shall mean a person who holds an unrevoked, temporary or permanent distributor's license. *(Department of State Revenue; Reg 6-6-1.1-103(e)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2311)*

45 IAC 12-1-6 "Marine facility" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-103

Sec. 6. For purposes of this chapter *[IC 6-6-1.1]*, the term "marine facility" shall mean a marina or boat livery. *(Department of State Revenue; Reg 6-6-1.1-103(f)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2311; errata, 7 IR 579)*

45 IAC 12-1-7 "Gasoline" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-103

Sec. 7. (a) For purposes of this chapter *[IC 6-6-1.1]*, the term "gasoline" shall mean:

(1) all products commonly or commercially known or sold as gasoline, including casing-head and absorption or natural gasoline, regardless of their classifications or uses; and

(2) any liquid, including gasohol, which when subjected to distillation of gasoline, naphtha, kerosene, and similar petroleum products with the American Society for Testing Materials Designation D-86, shows not less than ten percent (10%) distilled (recovered) below three hundred forty-seven degrees Fahrenheit (347 degrees F) or one hundred seventy-five degrees centigrade (175 degrees C), and not less than ninety-five percent (95%) distilled (recovered) below four hundred sixty-four degrees Fahrenheit (464 degrees F) or two hundred forty degrees centigrade (240 degrees C).

(b) The term "gasoline" does not include liquefied gases which would not exist as liquids at a temperature of sixty degrees Fahrenheit (60 degrees F) or sixteen degrees centigrade (16 degrees C), and pressure of fourteen and seven-tenths (14.7) pounds per square inch absolute, or denatured, wood, or ethyl alcohol, ether, turpentine, or acetates, unless such product is used as an additive in the manufacture, compounding, or blending of a liquid described in this subsection, in which event, only the quantity so used is considered gasoline. *(Department of State Revenue; Reg 6-6-1.1-103(g)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2311)*

45 IAC 12-1-8 "Motor vehicle" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-103

Sec. 8. (a) A "motor vehicle" is a vehicle which is propelled by an internal combustion engine or motor and is designed for highway use.

(b) Vehicles "designed for highway use" are those vehicles which are primarily adapted for, and engaged in highway transportation. All vehicles plated for general highway transportation or capable of being plated pursuant to Indiana law are presumed to be primarily adapted for and engaged in highway transportation.

(c) Fire trucks, fire protection apparatus, and ambulances owned by a municipality or by a person, police vehicles, and street equipment, as well as other vehicles publicly or privately owned which are primarily adapted for, and engaged in highway transportation are motor vehicles.

(d) The term "motor vehicle" shall not be construed to include road construction or maintenance machinery, vehicles not capable of being plated pursuant to Indiana law, well-boring or well-drilling apparatus, ditch-digging apparatus, or other similar equipment which is occasionally operated or moved over public highways.

(e) Vehicles which operate on rails are not motor vehicles.

(f) Vehicles designed and operated primarily as farm implements for drawing farm machinery are not motor vehicles.

(g) Tractors, plows, mowing machines, harvesters, Big A's, and other agricultural implements, including farm machinery when mounted and transported upon a trailer, are not motor vehicles when operated on a farm or when traveling upon public highways from one field to another, or to or from places of repair, or supply.

EXAMPLES

(1) An automobile manufacturer tests cars on a test track located on the manufacturer's property. During such testing, the cars are neither fully equipped nor assembled. Although the automobiles' design may be for highway use, such cars are neither adapted for nor engaged in highway transportation, and therefore, would not be considered motor vehicles.

(2) In a mining operation, haulage trucks not capable of being plated are employed to transport coal from a pit to a crusher, and then to a processing plant. The roadway between the pit and the crusher is a private roadway, wholly owned by the mining company. The roadway between the crusher and the processing plant is a public highway. Since the haulage trucks are not capable of being plated pursuant to Indiana law, such vehicles presumably would not be motor vehicles even though they do occasionally travel upon Indiana highways.

(3) Same facts as in example (2) except that the haulage trucks are either plated or capable of being plated pursuant to Indiana law. Haulage trucks which operate exclusively from the pit to the crusher would not be considered motor vehicles since they would not be engaged in highway transportation. Haulage trucks which travel from the crusher to the plant or which occasionally travel upon public highways would be considered motor vehicles since they would be engaged in highway transportation.

(Department of State Revenue; Reg 6-6-1.1-103(h)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2312)

45 IAC 12-1-9 "Person" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-103

Sec. 9. (a) The term "person" shall mean any natural person, partnership, corporation, joint venture, firm, association, or a representative appointed by a court, the state, or its political subdivision, or other legal entity.

(b) For purposes of this chapter *[IC 6-6-1.1]*, a corporate subsidiary shall be considered a "person".

(c) For purposes of this chapter *[IC 6-6-1.1]*, a corporate division shall not be considered a "person". *(Department of State Revenue; Reg 6-6-1.1-103(i)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2312)*

45 IAC 12-1-10 "Public highway" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-103

Sec. 10. Regulatory definition of "public highway" is used synonymously with the act *[IC 6-6-1.1-103(j)]*. *(Department of*

State Revenue; Reg 6-6-1.1-103(j)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2312)

45 IAC 12-1-11 "Taxable marine facility" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-103

Sec. 11. (a) For purposes of this chapter *[IC 6-6-1.1]*, the term "taxable marine facility" shall mean a boat livery located on an Indiana lake.

(b) For purposes of this chapter *[IC 6-6-1.1]*, an Indiana lake is an inland body or pool of standing or placid water, located wholly within the state of Indiana, formed either through natural processes or created artificially in whole or in part by man-made structures (includes all flood control and water storage reservoirs), and may or may not be characterized by inlet and outlet streams.

(c) The landward limit of lakes is defined by the intersection of water surface of the lake with the surrounding land and with the bed of inlet streams when such water surface is at the established legal level or average normal level of natural lakes or at the highest normal operating level of artificial lakes. *(Department of State Revenue; Reg 6-6-1.1-103(k)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2312)*

45 IAC 12-1-12 "Taxicab" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-103

Sec. 12. Regulatory definition of "taxicab" is used synonymously with the act *[IC 6-6-1.1-103(l)]*. *(Department of State Revenue; Reg 6-6-1.1-103(l)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2313)*

45 IAC 12-1-13 "Terminal" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-103

Sec. 13. Regulatory definition of "terminal" is used synonymously with the act *[IC 6-6-1.1-103(m)]*. *(Department of State Revenue; Reg 6-6-1.1-103(m)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2313)*

45 IAC 12-1-14 "Terminal or refinery operator" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-103

Sec. 14. (a) For purposes of this chapter *[IC 6-6-1.1]*, the term "terminal or refinery operator" shall mean the person for whom the terminal or refinery is being operated.

(b) The term "terminal or refinery" shall include only those terminals or refineries located in Indiana.

EXAMPLE

Company A and Company B enter into a lease agreement whereby Company B leases from Company A a gasoline terminal. Company B, the lessee, would be considered the terminal operator.

(Department of State Revenue; Reg 6-6-1.1-103(n)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2313)

45 IAC 12-1-15 "Receipt" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-103; IC 6-6-1.1-305

Sec. 15. (a) For purposes of this chapter *[IC 6-6-1.1]*, the term "receipt" shall mean the event from which a person's gasoline tax liability to the administrator arises.

(b) The events from which a licensed distributor's gasoline tax liability to the administrator arises, and the time at which such events occur shall be determined by the provisions set forth in sections 202, 203, 204, 205, 206, and 207 of this chapter *[45 IAC 12-2-4 through 45 IAC 12-2-18]*.

(c) The events which determine the tax liability to the administrator incurred by a person other than a licensed distributor, and the time at which such events occur are set forth in sections 203, 206, and 207 of this chapter *[45 IAC 12-2-8 through 45 IAC 12-2-10, 45 IAC 12-2-15 through 45 IAC 12-2-18]*.

(d) Except as provided in section 305 *[IC 6-6-1.1-305]*, only when a person has used gasoline without paying or incurring tax liability to his supplier has that person received gasoline. *(Department of State Revenue; Reg 6-6-1.1-103(o)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2313)*

45 IAC 12-1-16 "Acquire" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-103; IC 6-6-1.1-305

Sec. 16. (a) For purposes of this chapter *[IC 6-6-1.1]*, the term "acquire" shall mean the use of gasoline except in those instances where gasoline is received.

(b) Except as provided in section 305 *[IC 6-6-1.1-305]*, only when a person has used gasoline upon paying or incurring tax liability to his supplier has that person acquired gasoline. *(Department of State Revenue; Reg 6-6-1.1-103(p)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2313)*

Rule 2. Imposition of Tax

45 IAC 12-2-1 Imposition of tax

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-201

Sec. 1. (a) Except as otherwise provided, a tax known as the gasoline tax is imposed upon the use of all gasoline in this state.

(b) For purposes of this chapter *[IC 6-6-1.1]*, the term "use" shall only apply to those transactions whereby gasoline is transferred or otherwise used outside refinery, terminal, or pipeline.

(c) For purposes of this chapter *[IC 6-6-1.1]*, the term "use" shall mean:

(1) the exercise of any right or power over gasoline in this state incident to the ownership of that gasoline by each person to whom such rights or powers exist;

(2) the keeping or retention of gasoline in this state for any purpose by each person to whom such rights or powers exist; or

(3) the consumption, depletion, or other expenditure of gasoline in this state except for destruction, loss, evaporation or shrinkage.

(d) All gasoline used in state shall be considered to have been received or acquired. *(Department of State Revenue; Reg 6-6-1.1-201(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2313)*

45 IAC 12-2-2 Imposition of tax; payment of tax by a licensed distributor; invoiced gallonage

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-201

Sec. 2. (a) A licensed distributor shall initially pay to the administrator the tax imposed upon the invoiced gallonage of all gasoline received by the licensed distributor in this state less any deductions authorized by this chapter *[IC 6-6-1.1]*.

(b) The term "invoiced gallonage" shall mean either the "gross" gallons or the "net" gallons which are received by a licensed distributor.

(c) The licensed distributor shall initially elect to calculate tax liability entirely either on a "gross" gallon or a "net" gallon basis.

(d) The licensed distributor shall not, subsequent to such election, change the basis upon which tax liability is calculated without the prior approval of the administrator.

(e) For purposes of this section, any invoice or document, including a bill-of-lading, manifest or pipeline ticket, or exchange statement, which reflects the amount of gallonage transferred in a transaction shall be considered an invoice. That an invoice or document is not issued to a licensed distributor by the seller in a transaction does not preclude the licensed distributor's gasoline tax liability. *(Department of State Revenue; Reg 6-6-1.1-201(020); filed Sep 19, 1983, 2:23 pm: 6 IR 2314)*

45 IAC 12-2-3 Imposition of tax; ultimate burden of tax

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-201

Sec. 3. (a) Except as otherwise provided, a licensed distributor shall add the per gallon amount of tax to the selling price of each gallon of gasoline which is received by the licensed distributor and is subsequently sold in this state.

(b) The per gallon amount of tax which is added to the selling price of each gallon of gasoline shall be charged to and collected from each subsequent gasoline dealer so that the ultimate consumer bears the burden of tax.

(c) A gasoline dealer who sells gasoline through a stationary metered pump must include, in the selling price of the gasoline posted on the pump, the gasoline tax. *(Department of State Revenue; Reg 6-6-1.1-201(030); filed Sep 19, 1983, 2:23 pm: 6 IR 2314)*

45 IAC 12-2-4 Time considered received; withdrawal from in-state refinery or terminal; event identified

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-202

Sec. 4. (a) This section governs only those transactions whereby:

(1) gasoline is stored in an in-state refinery or terminal; and

(2) as a result of a transaction, gasoline is withdrawn by the purchaser, or for the account of the purchaser, and is:

(A) subsequently used by the purchaser in this state; or

(B) immediately transferred to a destination in this state other than another in-state refinery or terminal.

(b) In the event the aforementioned conditions are met, gasoline is considered received at the time the gasoline is withdrawn. *(Department of State Revenue; Reg 6-6-1.1-202(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2314)*

45 IAC 12-2-5 Time considered received; withdrawal from in-state refinery or terminal

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-202

Sec. 5. (a) Except as otherwise provided, gasoline withdrawn from an in-state terminal or refinery, for delivery or transportation to or for the account of a person who does not hold a valid distributor's license is received by the owner at the time the gasoline is withdrawn.

(b) Except as otherwise provided, gasoline withdrawn from an in-state terminal or refinery, for delivery or transportation to or for the account of a licensed distributor is received by the licensed distributor to whom or for whose account the gasoline is delivered or transported at the time the gasoline is withdrawn.

EXAMPLES

(1) Taxpayer A, who holds a valid Indiana gasoline distributor's license, owns gasoline stored in an in-state terminal. Taxpayer B intends to purchase gasoline from Taxpayer A and place the gasoline in storage in Indiana, at a place other than another in-state refinery or terminal. Taxpayer B does not hold a valid Indiana gasoline distributor's license. The gasoline is received by Taxpayer A at the time it is withdrawn for Taxpayer B's account. Taxpayer A must charge Taxpayer B a per gallon gasoline tax as provided in section 201 of this chapter *[45 IAC 12-2-1 through 45 IAC 12-2-3]*.

(2) Taxpayer A is the owner-operator of an Indiana refinery and holds a valid gasoline distributor's license. Taxpayer A withdraws gasoline from his refinery for the account of Taxpayer B, another licensed distributor. The gasoline is delivered, by common carrier, to Taxpayer B's storage facility in Indiana. The gasoline is considered received by Taxpayer B. Taxpayer A may not charge Taxpayer B the per gallon gasoline tax as provided in section 201 *[45 IAC 12-2-1 through 45 IAC 12-2-3]* since Taxpayer A did not receive the gasoline.

(3) Taxpayer A is the owner-operator of a gasoline refinery located in Indiana and holds a valid Indiana gasoline distributor's license. Taxpayer B operates a service station located outside the state of Indiana and does not hold a valid Indiana gasoline distributor's license. Taxpayer B contracts to purchase gasoline from Taxpayer A and such contract specifies the title passes from Taxpayer A to Taxpayer B at the time of withdrawal from Taxpayer A's Indiana refinery. Taxpayer B intends to export the gasoline from Indiana and advises Taxpayer A of this intention. The gasoline is then exported from Indiana via transport and is unloaded at Taxpayer B's service station. Since the gasoline is withdrawn from the refinery and since Taxpayer A transfers the gasoline to a destination in this state (the place at which title passes from Taxpayer A to Taxpayer B) to a person

other than a licensed gasoline distributor the gasoline is received by Taxpayer A at the time the gasoline is withdrawn from the refinery. Therefore, Taxpayer A must charge Taxpayer B the per gallon gasoline tax provided in section 201 *[45 IAC 12-2-1 through 45 IAC 12-2-3]* (see Indiana Regulation 6-6-1.1-202(020)(1) *[45 IAC 12-2-5(a)]*).

(4) Same facts as in example (3) except that the contract provides that title to the gasoline passes from Taxpayer A to Taxpayer B at Taxpayer B's service station located outside Indiana. Since the gasoline is withdrawn from the refinery and since Taxpayer A transfers the gasoline to a destination other than a destination in this state, the gasoline has not been received. Therefore, Taxpayer A may not charge Taxpayer B the per gallon tax provided in section 201 *[45 IAC 12-2-1 through 45 IAC 12-2-3]* (see Indiana Regulation 6-6-1.1-202(020)(2) *[45 IAC 12-2-5(b)]*).

(Department of State Revenue; Reg 6-6-1.1-202(020); filed Sep 19, 1983, 2:23 pm: 6 IR 2314; errata, 7 IR 579)

45 IAC 12-2-6 Time considered received; withdrawal from in-state refinery or terminal; presumption of destination

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-202

Sec. 6. Gasoline which is withdrawn from an in-state refinery or terminal is presumed to be withdrawn for sale or use in this state, or for transfer to a destination in this state other than another in-state refinery or terminal. *(Department of State Revenue; Reg 6-6-1.1-202(030); filed Sep 19, 1983, 2:23 pm: 6 IR 2315)*

45 IAC 12-2-7 Withdrawal from refinery or terminal; distribution requirement

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-202

Sec. 7. A person who obtains gasoline which has been withdrawn from a refinery or terminal but does not subsequently sell and distribute the gasoline to other commercial accounts by tank car, tank truck, or transport is not a distributor as defined by section 103(d) of this chapter *[45 IAC 12-1-4]*. *(Department of State Revenue; Reg 6-6-1.1-202(040); filed Sep 19, 1983, 2:23 pm: 6 IR 2315)*

45 IAC 12-2-8 Time considered received; imported gasoline placed into storage; event identified

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-203

Sec. 8. Gasoline which is imported into this state and placed in storage at a place other than a refinery or terminal is received at the time the gasoline is unloaded in this state. *(Department of State Revenue; Reg 6-6-1.1-203(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2315)*

45 IAC 12-2-9 Time considered received; imported gasoline placed into storage

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1

Sec. 9. (a) In instances where gasoline is being imported to or for the account of a licensed distributor, gasoline which is imported into this state by tank car, tank truck, transport, or other motor vehicle, and is subsequently placed into storage at a place other than a refinery or terminal is received by the licensed distributor for whom the gasoline is being imported.

(b) In instances where gasoline is being imported to or for the account of a person other than a licensed distributor and section 205 *[IC 6-6-1.1-205]* is not applicable, gasoline which is imported into this state by tank car, tank truck, transport, or other motor vehicle, and is subsequently placed into storage at a place other than a refinery or terminal is received by the person for whom the gasoline is being imported.

EXAMPLES

(1) Taxpayer A operates a bulk storage facility located outside the state of Indiana and holds a valid Indiana gasoline distributor's license. Taxpayer B operates a bulk storage facility located in Indiana and holds a valid Indiana gasoline distributor's license. Taxpayer A passes title to the gasoline to Taxpayer B outside the state of Indiana. The gasoline to which Taxpayer B has title is imported into Indiana via transport and is unloaded at Taxpayer B's bulk storage facility. Since the

gasoline is imported for the account of a licensed gasoline distributor, the gasoline is received by the licensed gasoline distributor for whose account it was imported, at the time of unloading. Taxpayer B must pay the tax directly to the administrator rather than to Taxpayer A (the supplier). (See Indiana Regulation 6-6-1.1-203(020)(1) *[subsection (a) of this section]*).

(2) Same facts as in example (1) except that title is transferred from Taxpayer A to Taxpayer B at the time the gasoline is unloaded in Indiana. Although Taxpayer A, a licensed distributor, has title to the gasoline at the time of its importation, the gasoline is being imported for the account of Taxpayer B who also holds a valid gasoline distributor's license. Therefore, the gasoline is received by Taxpayer B, the licensed gasoline distributor for whose account the gasoline was imported, at the time of unloading. (See Indiana Regulation 6-6-1.1-203(020)(1) *[subsection (a) of this section]*).

(3) Same facts as in example (1) except that Taxpayer A does not hold a valid Indiana gasoline distributor's license. Although Taxpayer A, who does not hold a valid Indiana gasoline distributor's license has title to the gasoline at the time of importation, the gasoline is being imported for the account of Taxpayer B who holds a valid Indiana gasoline distributor's license. Therefore, the gasoline is received by Taxpayer B at the time of unloading. (See Indiana Regulation 6-6-1.1-203(020)(1) *[subsection (a) of this section]*).

(4) Taxpayer A operates a bulk storage facility located outside of Indiana and does not hold a valid Indiana gasoline distributor's license. Taxpayer B operates a bulk storage facility located in Indiana and holds a valid Indiana gasoline distributor's license. Gasoline to which Taxpayer A has title is imported into Indiana via transport and is unloaded at a service station operated by Taxpayer C who does not hold a valid gasoline distributor's license. Title passes from Taxpayer A to Taxpayer B to Taxpayer C at the time of unloading. Since the gasoline is being imported for the account of Taxpayer B, a licensed gasoline distributor, the gasoline is received by Taxpayer B at the time of unloading. (See Indiana Regulation 6-6-1.1-203(020)(1) *[subsection (a) of this section]*). Furthermore, Taxpayer C acquires the gasoline from Taxpayer B and therefore, Taxpayer B must charge Taxpayer C the per gallon tax provided in section 201 *[IC 6-6-1.1-201]*.

(5) Taxpayer A operates a bulk storage facility located outside Indiana. Taxpayer B operates a service station located in Indiana and does not hold a valid Indiana gasoline distributor's license. Taxpayer A passes title to gasoline to Taxpayer B outside the state of Indiana. The gasoline to which Taxpayer B has title is imported into Indiana for the account of Taxpayer B and is unloaded at Taxpayer B's service station. Since title to the gasoline is held at the time of importation by Taxpayer B who does not hold a valid gasoline distributor's license and since the gasoline is imported for the account of Taxpayer B, the gasoline is received by Taxpayer B at the time of unloading. (See Indiana Regulation 6-6-1.1-203(020)(2) *[subsection (b) of this section]*). It should be noted that although Taxpayer B has incurred liability to the state of Indiana for the per gallon gasoline tax, Taxpayer B is not in compliance with section 401 *[45 IAC 12-4-1 and 45 IAC 12-4-2]* (see Indiana Regulation 6-6-1.1-401(020) *[45 IAC 12-4-2]*) and therefore must notify and report to the state as required under section 504 *[IC 6-6-1.1-504]* to avoid criminal sanctions.

(Department of State Revenue; Reg 6-6-1.1-203(020); filed Sep 19, 1983, 2:23 pm: 6 IR 2316; errata, 6 IR 2416)

45 IAC 12-2-10 Time considered received; destruction of imported gasoline

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-203

Sec. 10. In the event gasoline is imported into this state by tank car, tank truck, transport or other motor vehicle, and is lost or destroyed in this state, in whole or in part, prior to being unloaded and placed into storage, the entire load of gasoline is considered received at the time the gasoline is destroyed or lost by the person who would have received the gasoline had the destruction not occurred. *(Department of State Revenue; Reg 6-6-1.1-203(030); filed Sep 19, 1983, 2:23 pm: 6 IR 2316)*

45 IAC 12-2-11 Time considered received; imported gasoline; used directly from transport; event identified

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-204

Sec. 11. Gasoline which is imported into this state by tank car, tank truck, transport, or other motor vehicle, which is withdrawn from, consumed, or used by the transport unit, in whole or in part, prior to being placed into storage is received at the time the gasoline is used. *(Department of State Revenue; Reg 6-6-1.1-204(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2317)*

45 IAC 12-2-12 Time considered received; imported gasoline; used directly from transport

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-204

Sec. 12. Gasoline which is imported into this state by tank car, tank truck, transport, or other motor vehicle, which is withdrawn from, consumed, or used by the transport unit, in whole or in part, prior to being placed into storage is received by the person who would have received the gasoline under section 203 or 205 of this chapter *[45 IAC 12-2-8 through 45 IAC 12-2-10 or 45 IAC 12-2-13 through 45 IAC 12-2-14]* had the gasoline not been withdrawn or consumed prior to being delivered into storage. *(Department of State Revenue; Reg 6-6-1.1-204(020); filed Sep 19, 1983, 2:23 pm: 6 IR 2317)*

45 IAC 12-2-13 Time considered received; imported gasoline; transport by licensed distributor; event identified

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-205

Sec. 13. Gasoline which is imported into this state by a licensed distributor which is sold and delivered in this state directly to a person other than a licensed distributor is received at the time the gasoline is delivered. *(Department of State Revenue; Reg 6-6-1.1-205(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2317)*

45 IAC 12-2-14 Time considered received; imported gasoline; transport by licensed distributor

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-205

Sec. 14. Gasoline which is imported into this state by a licensed distributor which is sold and delivered in this state directly to a person other than a licensed distributor is received by the licensed distributor who imported the gasoline.

EXAMPLES

(1) Taxpayer A operates a bulk storage facility located outside the state of Indiana and holds a valid Indiana gasoline distributor's license. Taxpayer B operates a service station located in Indiana and does not hold a valid Indiana gasoline distributor's license. Gasoline to which Taxpayer A has title is imported into Indiana and is unloaded at Taxpayer B's service station. Title to the gasoline passes directly from Taxpayer A to Taxpayer B at the time of unloading at Taxpayer B's service station in Indiana. Since the gasoline is imported into Indiana by a licensed distributor and since title passes from Taxpayer A, a licensed distributor, to Taxpayer B a person who does not hold a valid Indiana gasoline distributor's license in Indiana, the gasoline is received by Taxpayer A at the time the gasoline is unloaded at Taxpayer B's service station.

(2) Same facts as in example (1) except that title passes from Taxpayer A to Taxpayer B prior to the gasoline's importation into Indiana. Taxpayer B receives the gasoline at the time of unloading (see example (e) under Indiana Regulation 6-6-1.1-203(020) *[45 IAC 12-2-9(b)(5)]*).

(Department of State Revenue; Reg 6-6-1.1-205(020); filed Sep 19, 1983, 2:23 pm: 6 IR 2317; errata, 7 IR 579)

45 IAC 12-2-15 Time considered received; in-state gasoline produced or blended; event identified

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-206

Sec. 15. Gasoline produced, compounded, or blended in this state at a place other than a refinery or terminal is considered received at the time the blended product is produced, compounded, or blended to the extent of the non-gasoline compound, provided that the gasoline tax has been paid on the gasoline which was purchased for the blending process. *(Department of State Revenue; Reg 6-6-1.1-206(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2317)*

45 IAC 12-2-16 Time considered received; in-state gasoline produced or blended

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-206

Sec. 16. Gasoline produced, compounded, or blended in this state at a place other than a refinery or terminal is considered

received by the person blending the product at the time the blended product is produced, compounded, or blended to the extent of the non-gasoline compound provided that the gasoline tax has been paid on the gasoline which was purchased for the blending process. *(Department of State Revenue; Reg 6-6-1.1-206(020); filed Sep 19, 1983, 2:23 pm: 6 IR 2318)*

45 IAC 12-2-17 Time considered received; in-state gasoline not covered by 6-6-1.1-202 through 6-6-1.1-206; event identified

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-207

Sec. 17. (a) In instances where gasoline is acquired in this state by any person and the gasoline tax has not been remitted to the state, the gasoline will be considered to have been received.

(b) Paragraph (1) *[renumbered subsection (a) by the revisor]* does not apply in instances where the use of gasoline is exempt under section 301 of this chapter *[45 IAC 12-3-1 through 45 IAC 12-3-5]*. *(Department of State Revenue; Reg 6-6-1.1-207(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2318)*

45 IAC 12-2-18 Time considered received; in-state gasoline not covered by 6-6-1.1-202 through 6-6-1.1-206

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-207

Sec. 18. (a) In instances where gasoline is acquired in this state by any person and the gasoline tax has not been remitted to the state, the gasoline will be considered to have been received by the person who acquired the gasoline.

(b) Paragraph (1) *[renumbered subsection (a) by the revisor]* does not apply in instances where the use of the gasoline is exempt under section 301 of this chapter *[45 IAC 12-3-1 through 45 IAC 12-3-5]*. *(Department of State Revenue; Reg 6-6-1.1-207(020); filed Sep 19, 1983, 2:23 pm: 6 IR 2318)*

45 IAC 12-2-19 Imported gasoline; motor vehicle fuel supply tank

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-208

Sec. 19. (a) Gasoline purchased and placed into the fuel supply tank of a motor vehicle outside Indiana, which is subsequently brought into Indiana in the fuel supply tank of that vehicle, is exempt from the tax imposed under this chapter *[IC 6-6-1.1]*.

(b) For purposed *[sic.]* of this chapter *[IC 6-6-1.1]*, the "fuel supply tank" of a motor vehicle is the usual and ordinary tank from which gasoline is withdrawn exclusively for the operation of that motor vehicle. *(Department of State Revenue; Reg 6-6-1.1-208(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2318)*

Rule 3. Exemptions

45 IAC 12-3-1 Exemptions: exported gasoline

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-301

Sec. 1. (a) Gasoline exported from Indiana to another state, territory, foreign country or other jurisdiction is exempt from the tax imposed by this chapter *[IC 6-6-1.1]*.

(b) Transactions whereby gasoline is sold for export are not exempt.

(c) Gasoline transported from Indiana in a fuel supply tank of a motor vehicle is not exempt. *(Department of State Revenue; Reg 6-6-1.1-301(1)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2318)*

45 IAC 12-3-2 Exemptions: sales to United States government

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-301

Sec. 2. (a) Gasoline sold to the United States government, an agency of the United States government or an instrumentality of the United States government is exempt.

(b) Gasoline sold to a person other than the United States government, an agency of the United States government or an instrumentality of the United States government, who is acting on behalf of, and/or contracted with the United States government or an instrumentality of the United States government is not afforded this exemption.

EXAMPLE

Licensed distributor A sells gasoline to person B who is under contract with the United States government. Person B is not licensed as a gasoline distributor in Indiana. The transaction between licensed distributor A and person B is not exempt since there has not been a sale to the United States government.

(Department of State Revenue; Reg 6-6-1.1-301(2)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2318)

45 IAC 12-3-3 Exemptions: consumption by licensed distributor

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-301

Sec. 3. (a) Gasoline used by a licensed distributor for any purpose other than the generation of power for the propulsion of motor vehicles upon public highways is exempt.

(b) For purposes of this subsection, the term "use" shall mean the consumption, depletion or other expenditure of gasoline in this state except for destruction, loss, evaporation, or shrinkage as provided in Indiana Regulation 6-6-1.1-201(010)(3)(c) *[45 IAC 12-2-1(c)(3)]*. *(Department of State Revenue; Reg 6-6-1.1-301(4)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2319)*

45 IAC 12-3-4 Exemption: gasoline lost or destroyed

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-301

Sec. 4. As a general rule, gasoline received by a licensed distributor and thereafter lost or destroyed except by evaporation, shrinkage, or unknown cause, while the distributor is still the owner thereof as a result of theft, leakage, fire, accident, explosion, lightning, flood, storm, act of war, public enemy, or other like cause is exempt. *(Department of State Revenue; Reg 6-6-1.1-301(5)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2319)*

45 IAC 12-3-5 Exemption: gasoline lost or destroyed; receipt prior to delivery

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-301

Sec. 5. Gasoline received by a licensed distributor prior to delivery, and thereafter lost or destroyed except by evaporation, shrinkage, or unknown cause, as a result of theft, leakage, fire, accident, explosion, lightning, flood, storm, act of war, public enemy, or other like cause is exempt provided that a subsequent person has not incurred gasoline tax liability for the product. *(Department of State Revenue; Reg 6-6-1.1-301(5)(020); filed Sep 19, 1983, 2:23 pm: 6 IR 2319)*

45 IAC 12-3-6 Application for exemption permit; persons eligible

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-302; IC 6-6-1.1-303

Sec. 6. (a) The following persons may apply to the administrator for an exemption permit:

(1) a person who operates an airport in Indiana where gasoline is sold for the exclusive purpose of propelling aircraft engines or motors;

(2) a person engaged at an airport in the business of selling gasoline in Indiana for exclusive use in aircraft engines or motors;

(3) a person in Indiana who operates a marine facility except a taxable marine facility, and who sells gasoline at that facility for the exclusive purpose of propelling motorboat engines;

(4) a person engaged at a marine facility except a taxable marine facility in the business of selling gasoline in Indiana for exclusive use in motorboat engines.

(b) A person may apply for an exemption permit under this section whether or not the person is a licensed distributor.

(c) Having satisfied the requirements of this section, a person must still meet the requirements set forth in Indiana Code 6-6-1.1-303 prior to the administrator's approval of the application. *(Department of State Revenue; Reg 6-6-1.1-302(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2319)*

45 IAC 12-3-7 Application for exemption permit; form; surety bond; conditions

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-303; IC 6-8.1-5-4

Sec. 7. (a) A person must apply for an exemption permit on the form prescribed by the administrator.

(b) A person must submit, with the application, a bond in an amount determined by the administrator not to be in excess of twenty-five thousand dollars ($25,000.00).

(c) The administrator may approve an application contingent upon the following conditions:

(1) the applicant will sell all gasoline purchased tax free under the exemption permit for the exclusive purpose of propelling the engines or motors of aircraft or motorboats;

(2) the applicant will keep for a period of three (3) years plus the current year complete records of all gasoline purchased, acquired, stored, used, or disposed of by him pursuant to Indiana Code 6-8.1-5-4;

(3) the applicant will provide the administrator with such reports of gasoline purchased, acquired, used, or disposed of as the administrator may require;

(4) the applicant will permit the administrator or his authorized agent to examine, during regular business hours, any of the records of the applicant pertaining to the acquisition, use, and distribution of gasoline and any of the equipment of the applicant used for the receipt, storage, or use of gasoline;

(5) the applicant will not purchase gasoline tax free for use in motor vehicles; and

(6) the applicant will not sell any gasoline acquired tax free under the exemption permit unless it is sold tax free and delivered directly into the fuel supply tank of an aircraft or motor boat.

(Department of State Revenue; Reg 6-6-1.1-303(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2319)

Rule 4. License to Distributor

45 IAC 12-4-1 License to distributor; requirement

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1

Sec. 1. (a) Except as provided in Indiana Code 6-6-1.1-206, a person desiring to receive gasoline in Indiana and therefore pay the gasoline tax to the administrator must be licensed as a gasoline distributor in Indiana.

(b) Except as provided in Indiana Code 6-6-1.1-207, persons not licensed as distributors in Indiana must pay the gasoline tax to their suppliers upon acquisition of this product.

(c) For purposes of this section and section 415 of this chapter *[45 IAC 12-4-15]*, the term supplier shall mean any person who sells gasoline in Indiana. *(Department of State Revenue; Reg 6-6-1.1-401(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2320)*

45 IAC 12-4-2 License to distributor; failure to obtain; application of regulation

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-401; IC 6-6-1.1-504

Sec. 2. As provided in section 504 of this chapter *[IC 6-6-1.1-504]*, a person who acts as a distributor in this state but fails to obtain the license required by this chapter *[IC 6-6-1.1]* is subject to the provisions of this chapter *[IC 6-6-1.1]* as if such person holds the license required by this chapter *[IC 6-6-1.1]*. *(Department of State Revenue; Reg 6-6-1.1-401(020); filed Sep 19, 1983, 2:23 pm: 6 IR 2320)*

45 IAC 12-4-3 License to distributor; application; contents

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-402

Sec. 3. (a) A person desiring to become licensed as a distributor in Indiana must file with the administrator a sworn application containing the following information:

(1) the name under which the distributor will transact business in Indiana;

(2) the applicant's principal place of business; and

(3) the name and complete residence address of the owner or the names and addresses of the partners, if the applicant is a partnership, or the names and addresses of the principal officers, if the applicant is a corporation or association.

(b) A person may not operate as a distributor in Indiana without first satisfying the requirements set forth in sections 404, 405, 406, and 410 *[IC 6-6-1.1-404 through IC 6-6-1.1-406; IC 6-6-1.1-410]*, and without first being issued a license by the administrator under section 411 *[IC 6-6-1.1-411]. (Department of State Revenue; Reg 6-6-1.1-402(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2320)*

45 IAC 12-4-4 License to distributor; foreign corporation

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-404

Sec. 4. No license or exemption permit shall be issued to a foreign corporation unless it is properly qualified to do business in Indiana. *(Department of State Revenue; Reg 6-6-1.1-404(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2320)*

45 IAC 12-4-5 Bond; filing requirements

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-406

Sec. 5. (a) Concurrently with the filing of an application for a distributor's license, every applicant must file with the administrator a bond:

(1) in an amount of not less than two thousand dollars ($2,000.00) nor more than three (3) months tax liability as estimated by the administrator;

(2) in cash or with a surety company approved by the administrator;

(3) upon which the distributor is the principal obligor and the state of Indiana is the obligee; and

(4) conditioned upon the prompt filing of true reports and payment of all gasoline taxes levied by Indiana, together with any penalties and interest, and upon faithful compliance with the provisions of this chapter *[IC 6-6-1.1]*.

(b) The administrator shall determine the amount of the distributor's bond. *(Department of State Revenue; Reg 6-6-1.1-406(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2320; filed Apr 30, 1986, 3:32 pm: 9 IR 2189)*

45 IAC 12-4-6 Bond increases; hearing; new bond or rider

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-408

Sec. 6. (a) The administrator may propose an increase in a licensed distributor's current bond amount if the administrator has deemed the current bond amount to be insufficient to insure payment to the state of the tax, penalty and interest for which the licensed distributor is or may become liable.

(b) If after the proposed increased bond amount notice is received by the licensed distributor, the licensed distributor does not comply with the administrator's proposal within a reasonable time, the administrator shall notify the licensed distributor in writing of a hearing to allow the licensed distributor to show cause why the proposed increase is not warranted.

(c) The administrator shall give the licensed distributor at least fifteen (15) days written notice of the hearing.

(d) If after a hearing the administrator determines that an increase is warranted, the licensed distributor shall submit to the administrator within a time prescribed by the administrator, a new bond or rider in the amount determined by the administrator.

(e) The new bond or rider must meet the requirements set forth in section 406 of this chapter *[45 IAC 12-4-5]*.

(f) If the new bond or rider required under this section is unsatisfactory or not furnished within the time prescribed by the

administrator, the administrator shall cancel the distributor's license. *(Department of State Revenue; Reg 6-6-1.1-408(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2320; filed Apr 30, 1986, 3:32 pm: 9 IR 2189)*

45 IAC 12-4-7 Release of surety of distributor's bond; notice; new bond; cancellation of license

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-409

Sec. 7. (a) The surety of a licensed distributor may cancel a bond issued to a licensed distributor upon notifying the administrator.

(b) The cancellation shall be effective sixty (60) days after written notice is received by the administrator.

(c) The release does not affect any liability accruing before expiration of the sixty (60) day period.

(d) Upon receiving such notice, the administrator shall notify the licensed distributor that the surety furnishing the bond has requested release.

(e) The licensed distributor must file with the administrator a replacement bond which meets the requirements set forth in section 406 of this chapter *[45 IAC 12-4-5]*.

(f) If the licensed distributor does not file such bond with the administrator within the sixty (60) day period, the administrator shall cancel the distributor's license. *(Department of State Revenue; Reg 6-6-1.1-409(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2321)*

45 IAC 12-4-8 Annual financial statement; bond amount requirement

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-410

Sec. 8. The administrator may require a distributor to furnish annual financial statements to determine if any change is required in the amount of a distributor's bond. *(Department of State Revenue; Reg 6-6-1.1-410(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2321)*

45 IAC 12-4-9 Temporary license; investigation; conditions and requirements

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-411; IC 6-8.1-5-4

Sec. 9. (a) The administrator may make any investigation necessary once an application has been properly filed.

(b) Upon all conditions having been met under this chapter *[IC 6-6-1.1]*, including payment of fee and bonding requirements, the person making application shall be issued a temporary license to transact business as a distributor in Indiana.

(c) The temporary license is valid for one (1) year except as otherwise provided, and is subject to the cancellation provisions of this chapter *[IC 6-6-1.1]*.

(d) A person who has been issued a temporary license must maintain books and records pursuant to Indiana Code 6-8.1-5-4. *(Department of State Revenue; Reg 6-6-1.1-411(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2321)*

45 IAC 12-4-10 Temporary license; extension

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-411

Sec. 10. (a) The administrator may, upon finding that a person holding a temporary license has not fully complied with the provisions of this chapter *[IC 6-6-1.1]*, extend the period of the person's temporary license.

(b) The administrator may revoke such extension upon finding that the person has, subsequent to such extension, not fully complied with the provisions of this chapter *[IC 6-6-1.1]*.

(c) Notice of the extension or revocation shall be sent by registered or certified mail to the person's last known address. *(Department of State Revenue; Reg 6-6-1.1-411(020); filed Sep 19, 1983, 2:23 pm: 6 IR 2321)*

45 IAC 12-4-11 Permanent license; minimum gallonage; Indiana based distributor

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-412; IC 6-8.1

Sec. 11. (a) The administrator shall issue a permanent license to an Indiana based holder of a temporary license upon the following conditions:

(1) the Indiana based distributor has distributed at least five hundred thousand (500,000) gallons of gasoline during the year in which the temporary license was in effect;

(2) the Indiana based distributor has fully complied with the provisions and requirements set forth by this chapter *[IC 6-6-1.1]* and Indiana Code 6-8.1; and

(3) the Indiana based distributor has received, sold, or used gasoline during the six (6) month period immediately preceding expiration of the temporary license or the Indiana based distributor is presently engaged in such business.

(b) The permanent license shall remain effective unless cancelled under this chapter *[IC 6-6-1.1]*. *(Department of State Revenue; Reg 6-6-1.1-412(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2322)*

45 IAC 12-4-12 Permanent license; minimum gallonage; non-Indiana based distributor

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-412; IC 6-8.1

Sec. 12. (a) The administrator shall issue a permanent license to a non-Indiana based holder of a temporary license upon the following conditions:

(1) the non-Indiana based distributor has fully complied with the provisions and requirements set forth by this chapter *[IC 6-6-1.1]* and Indiana Code 6-8.1; and

(2) the non-Indiana based distributor has received, sold, or used gasoline during the six (6) month period immediately preceding expiration of the temporary license or the non-Indiana based distributor is presently engaged in such business.

(b) The permanent license shall remain effective unless cancelled under this chapter *[IC 6-6-1.1]*. *(Department of State Revenue; Reg 6-6-1.1-412(020); filed Sep 19, 1983, 2:23 pm: 6 IR 2322)*

45 IAC 12-4-13 No permanent license; insufficient gallonage; Indiana based distributor

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-413

Sec. 13. The administrator shall not issue a permanent license to an Indiana based holder of a temporary license if the Indiana based distributor does not distribute at lease *[sic.]* five hundred thousand (500,000) gallons of gasoline during the year that the temporary license was in effect. *(Department of State Revenue; Reg 6-6-1.1-413(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2322)*

45 IAC 12-4-14 License non-assignable; new license

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-414

Sec. 14. (a) A license issued under this chapter *[IC 6-6-1.1]* is not assignable and is valid only for the distributor in whose name it is issued.

(b) If there is a change in name, the distributor must apply for a new license.

(c) If there is a change in ownership of a business other than a corporation, the distributor must apply for a new license. *(Department of State Revenue; Reg 6-6-1.1-414(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2322)*

45 IAC 12-4-15 Cancellation of distributor's license; grounds; notice; hearing

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-305; IC 6-6-1.1-415; IC 6-8.1-10

Sec. 15. (a) The administrator may, after ten (10) days' written notice, cancel a distributor's license if the distributor:

(1) files a false monthly report of the information required by this chapter *[IC 6-6-1.1]*;

(2) fails or refuses to file the monthly report required by this chapter *[IC 6-6-1.1]*;

(3) fails or refuses to pay the full amount of tax imposed by this chapter *[IC 6-6-1.1]*, and penalty and interest imposed under Indiana Code 6-8.1-10; or

(4) is an Indiana distributor and fails to distribute five hundred thousand (500,000) gallons or more of gasoline during a twelve (12) month period.

(b) Notice of the hearing shall be sent by registered or certified mail to the licensed distributor's last known address.

(c) Upon notification, the licensed distributor may either appear at the time and place given in the notice or submit in writing to the administrator why the distributor's license should not be cancelled.

(d) The licensed distributor's failure to appear at the time and place given in the notice or failure to submit a written statement shall result in the immediate cancellation of the distributor's license.

(e) Notice of cancellation shall be sent by registered or certified mail to the person's last known address.

(f) A person whose distributor's license has been cancelled may not purchase gasoline in Indiana without paying the tax imposed under this chapter *[IC 6-6-1.1]* to such person's supplier as defined in section 401 of this chapter *[IC 6-6-1.1-401]* except as provided in Indiana Code 6-6-1.1-305. *(Department of State Revenue; Reg 6-6-1.1-415(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2322)*

45 IAC 12-4-16 Cancellation of distributor's license for inactiveness; notice

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-417

Sec. 16. (a) The administrator may cancel a distributor's license by giving sixty (60) days' notice mailed to the licensed distributor's last known address if:

(1) the licensed distributor has not received, used, or sold gasoline for a period of six (6) months; and

(2) the licensed distributor is no longer actively engaged as a distributor.

(Department of State Revenue; Reg 6-6-1.1-417(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2323)

Rule 5. Monthly Reports

45 IAC 12-5-1 Monthly reports to determine tax liability; itemized contents

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-501

Sec. 1. (a) Each licensed distributor shall file monthly with the administrator a report indicating the total amount of gallons of gasoline received, acquired, used, and sold during the preceding calendar month.

(b) This report must be in a form prescribed by the administrator and must be filed even if there is no tax liability for the preceding calendar month. *(Department of State Revenue; Reg 6-6-1.1-501(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2323)*

45 IAC 12-5-2 Monthly reports; due date

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-501; IC 6-8.1

Sec. 2. (a) The monthly report prescribed by this section must be postmarked no later than the twentieth (20th) day following the month being reported.

(b) Reports not filed or filed after the due date are subject to penalty and interest pursuant to the provisions set forth in Indiana Code 6-8.1. If the due date falls on a Saturday, a Sunday, a national legal holiday, or a statewide holiday, the due date is the next succeeding day that is not a Saturday, Sunday, or holiday. *(Department of State Revenue; Reg 6-6-1.1-501(020); filed Sep 19, 1983, 2:23 pm: 6 IR 2323)*

45 IAC 12-5-3 Monthly reports; identification of sales to taxable marine facility

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-305; IC 6-6-1.1-501

Sec. 3. An itemized statement showing the gallons of gasoline sold to a taxable marine facility for which the distributor does not receive an exemption certificate authorized by section 305 of this chapter *[IC 6-6-1.1-305]* shall be identified on the report

required by this chapter *[IC 6-6-1.1]* in the form and manner prescribed by the administrator. *(Department of State Revenue; Reg 6-6-1.1-501(030); filed Sep 19, 1983, 2:23 pm: 6 IR 2323)*

45 IAC 12-5-4 Monthly payment of tax due; computation

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-201; IC 6-6-1.1-502

Sec. 4. (a) Each licensed distributor shall pay monthly to the administrator the full amount of tax due under this chapter *[IC 6-6-1.1]* for the preceding calendar month.

(b) The total amount of tax due shall be calculated by determining the total amount of invoice gallons of gasoline received less deductions authorized by this chapter *[IC 6-6-1.1]* multiplied by the current tax rate as provided by IC 6-6-1.1-201. *(Department of State Revenue; Reg 6-6-1.1-502(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2323; filed Apr 30, 1986, 3:32 pm: 9 IR 2190)*

45 IAC 12-5-5 Monthly payment of tax due; due date

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-502; IC 6-8.1

Sec. 5. (a) The total amount of tax due for the preceding calendar month must be remitted to the administrator by the licensed distributor with the monthly report required by the this chapter *[IC 6-6-1.1]* no later than the twentieth (20th) day following the month being reported.

(b) Tax not remitted or remitted after the due date is subject to penalty and interest pursuant to the provisions set forth in Indiana Code 6-8.1. If the due date falls on a Saturday, a Sunday, a national legal holiday, or a statewide holiday, the due date is the next succeeding day that is not a Saturday, a Sunday, or holiday. *(Department of State Revenue; Reg 6-6-1.1-502(020); filed Sep 19, 1983, 2:23 pm: 6 IR 2323)*

45 IAC 12-5-6 Monthly payment of tax due; identification of tax attributable to taxable marine facilities

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-502

Sec. 6. The tax attributable to sales of gasoline to taxable marine facilities shall be identified on the report required by this chapter *[IC 6-6-1.1]* in the form and manner prescribed by the administrator. *(Department of State Revenue; Reg 6-6-1.1-502(030); filed Sep 19, 1983, 2:23 pm: 6 IR 2324)*

45 IAC 12-5-7 Purchaser other than licensed distributor; same reports; payment of tax

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-504; IC 6-6-1.1-704

Sec. 7. (a) A person other than a licensed distributor who purchases, uses, or otherwise acquires taxable gasoline and fails to pay the gasoline tax to either a licensed Indiana distributor or Indiana dealer is subject to the reporting and remittance requirements of licensed distributors under this chapter *[IC 6-6-1.1]*.

(b) A person reporting under this section is not entitled to claim any deductions or credits as provided in sections 701, 702, 703, 704, and 705 of this chapter *[45 IAC 12-7-1 through 45 IAC 12-7-4 and IC 6-6-1.1-704]*.

(c) For purposes of this section, the term "taxable gasoline" shall mean gasoline which is used in this state that is not eligible for exemption. *(Department of State Revenue; Reg 6-6-1.1-504(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2324)*

45 IAC 12-5-8 Discontinuance, sale or transfer of distributor's business; notice to administrator

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-512; IC 6-8.1-5-4

Sec. 8. (a) A licensed distributor shall notify the administrator in writing at least ten (10) days prior to the licensed distributor's ceasing to do business as a distributor.

(b) The notice shall give the date of discontinuance or the date of sale or transfer and the name and address of the purchaser or transferee.

(c) A licensed distributor who is subject to this section must maintain books and records for a period of three (3) years after the date of discontinuance, sale or transfer pursuant to Indiana Code 6-8.1-5-4. *(Department of State Revenue; Reg 6-6-1.1-512(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2324)*

45 IAC 12-5-9 Discontinuance, sale or transfer of distributor's business; accrued tax liabilities due and payable

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-513; IC 6-8.1-10

Sec. 9. (a) Notwithstanding any other provision of this chapter *[IC 6-6-1.1]*, any tax, penalty, and interest which have accrued under this chapter *[IC 6-6-1.1]* or Indiana Code 6-8.1-10 are due and payable at the time a licensed distributor ceases to do business as a distributor.

(b) A licensed distributor subject to this section must file a final report and pay such amounts accrued within ten (10) days after the discontinuance, sale or transfer. *(Department of State Revenue; Reg 6-6-1.1-513(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2324)*

45 IAC 12-5-10 Sale or transfer of distributor's business; liability of purchaser or transferee for any accrued unpaid tax, penalty and interest

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-514

Sec. 10. (a) If a distributor fails to give notice to the administrator as required by section 512 of this chapter *[45 IAC 12-5-8]*, the purchaser or transferee of such business is liable to the state for all unpaid tax, penalty, and interest which have accrued against the distributor through the date of sale or transfer.

(b) The purchaser's or transferee's liability is limited to the value of the property and business acquired from the distributor. *(Department of State Revenue; Reg 6-6-1.1-514(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2324)*

Rule 6. Monthly Accounting of Gasoline Delivered

45 IAC 12-6-1 Monthly accounting of all gasoline delivered to, or withdrawn from, a refinery or terminal

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-607

Sec. 1. A licensed distributor who owns or operates a refinery or terminal in Indiana shall, on forms prescribed by the administrator, make a monthly accounting to the administrator of:

(1) all gasoline withdrawn from a refinery or terminal;
(2) all gasoline delivered to a refinery or terminal;
(3) all gasoline produced, compounded, or blended;
(4) all title transfers of gasoline in terminal or refinery; and
(5) any other information deemed necessary by the administrator.

(Department of State Revenue; Reg 6-6-1.1-607(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2324)

Rule 7. Exempt Gasoline

45 IAC 12-7-1 Deduction for exempted gasoline

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-701; IC 6-6-1.1-908

Sec. 1. (a) A licensed distributor who acquires or receives gasoline that subsequently qualifies for an exemption under section

301 of this chapter *[45 IAC 12-3-1 through 45 IAC 12-3-5]* may claim a deduction for such gasoline.

(b) The deduction may be taken only after the licensed distributor has submitted adequate documentation to the administrator.

(c) Except as provided in section 908 of this chapter *[IC 6-6-1.1-908]*, the deduction must be claimed on the report covering the month of export, loss, destruction, sale or use. *(Department of State Revenue; Reg 6-6-1.1-701(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2325)*

45 IAC 12-7-2 Sale or exchange agreement; deduction

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-702; IC 6-6-1.1-908

Sec. 2. (a) A licensed distributor who acquires or receives gasoline in this state who subsequently sells, transfers, or exchanges the gasoline to or for the account of another licensed distributor may claim a deduction for the gasoline.

(b) The deduction may be taken only after the licensed distributor has submitted adequate documentation to the administrator.

(c) Except as provided in section 908 of this chapter *[IC 6-6-1.1-908]*, the deduction must be claimed on the report covering the month of sale, transfer, or exchange. *(Department of State Revenue; Reg 6-6-1.1-702(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2325)*

45 IAC 12-7-3 Sale of tax exempt gasoline; deduction

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-703

Sec. 3. (a) A licensed distributor who sells gasoline to a person holding an exemption permit as prescribed in section 302 and 303 of this chapter *[45 IAC 12-3-6 and 45 IAC 12-3-7]* may claim a deduction for that gasoline.

(b) The deduction may be taken only after the licensed distributor has submitted adequate documentation to the administrator.

(c) The deduction must be claimed on the report covering the month of sale. *(Department of State Revenue; Reg 6-6-1.1-703(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2325)*

45 IAC 12-7-4 Deduction for evaporation, shrinkage, losses, and tax-related expenses

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-704; IC 6-6-1.1-705

Sec. 4. (a) Except as otherwise provided, a licensed distributor may claim a deduction equal to one and six-tenths percent (1.6%) of the number of invoiced gallons of gasoline received in Indiana during the preceding calendar month less all authorized deductions claimed under sections 701, 702, 703, and 704 of this chapter *[45 IAC 12-7-1 through 45 IAC 12-7-3 and IC 6-6-1.1-704]*.

(b) The deduction provided by this section may be taken by a licensed distributor when timely reporting and remitting the tax accrued under this chapter *[IC 6-6-1.1]*.

(c) The deduction provided by this section shall not be allowed for losses covered under section 301(5) of this chapter *[45 IAC 12-3-4 and 45 IAC 12-3-5]*. *(Department of State Revenue; Reg 6-6-1.1-705(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2325; filed Apr 30, 1986, 3:32 pm: 9 IR 2190)*

Rule 8. Refund for Tax Paid on Gasoline

45 IAC 12-8-1 Refund to purchaser for gasoline lost or destroyed; limitations; requisites; distributor excepted

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-901

Sec. 1. (a) A person, except a distributor, who has purchased gasoline in Indiana and has paid the tax imposed on it by this chapter *[IC 6-6-1.1]* is entitled to a refund without interest of the amount of tax paid on gasoline in excess of one hundred (100) gallons which is lost or destroyed, except by evaporation, shrinkage, or unknown cause, while such person owned it.

(b) To obtain the refund, the person:

(1) must, within five (5) days after the loss or destruction is discovered, notify the administrator in writing of the amount of gasoline lost or destroyed; and

(2) must, within sixty (60) days after notice is given, file with the administrator an affidavit that is sworn to by the person having custody of the gasoline at the time of loss or destruction and that sets forth in full the circumstances and amount of the loss or destruction and any other information the administrator may require.

(Department of State Revenue; Reg 6-6-1.1-901(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2325)

45 IAC 12-8-2 Refund to local transit systems; limitations; requisites

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-902

Sec. 2. (a) A local transit system is entitled to a refund of tax paid on gasoline used in its operations along highways in Indiana.

(b) For purposes of this section, a "local transit system" is a municipally owned or contracted common carrier who transports persons within the corporate limits of a municipality, or within the corporate limits and not more than five (5) miles beyond the corporate limits of a municipality, all of which are in Indiana.

(c) For purposes of paragraph (2) *[renumbered subsection (b) by the revisor]*, the term "common carrier" shall mean any person that holds himself out to the general public to engage in the transportation by motor vehicle of persons for compensation whether over regular or irregular routes.

(d) For purposes of this section, the term "use" shall mean the consumption, depletion, or other expenditure of gasoline in this state except for destruction, loss, evaporation, or shrinkage as provided in Indiana Regulation 6-6-1.1-201(010)(3)(c) *[45 IAC 12-2-1(c)(3)]*. *(Department of State Revenue; Reg 6-6-1.1-902(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2326)*

45 IAC 12-8-3 Refund to local transit system; interest

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-902; IC 6-8.1

Sec. 3. (a) To claim a refund under this section, a person must file a claim pursuant to the provisions set forth in section 904 of this chapter *[45 IAC 12-8-14]*.

(b) If a refund is not issued within ninety (90) days of filing of the verified statement and all supplemental information required by section 904 of this chapter *[45 IAC 12-8-14]*, the department shall pay interest as provided in Indiana Code 6-8.1. *(Department of State Revenue; Reg 6-6-1.1-902(020); filed Sep 19, 1983, 2:23 pm: 6 IR 2326)*

45 IAC 12-8-4 Refund for tax paid on gasoline purchased or used for operating stationary gas engines

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-903

Sec. 4. (a) A person is entitled to a gasoline tax refund for the operation of stationary gasoline engines if:

(1) the person is the purchaser of the gasoline and has paid the gasoline tax thereon; and

(2) the stationary gasoline engine is being operated by or for the purchaser for commercial use.

(b) For purposes of this section, a "stationary gasoline engine" is any internal combustion engine or motor which is not operated in whole or in part to propel itself in conjunction with any vehicle.

(c) Representative of such engines are engines fueled by gasoline that perform utility functions around machine shops, construction sites, and farms which are not designed for, intended for, or generally capable of propelling a motor vehicle.

(d) For purposes of this chapter *[IC 6-6-1.1]*, "commercial use" shall mean the consumption, depletion, or other expenditure of gasoline in this state except for destruction, loss, evaporation, or shrinkage which is related to the exchange of goods or services in contemplation of profit including non-proprietary functions of governmental agencies and not-for-profit organizations. *(Department of State Revenue; Reg 6-6-1.1-903(1)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2326; errata, 7 IR 579)*

45 IAC 12-8-5 Refund for tax paid on gasoline purchased or used for operating concrete mixing equipment

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-903

Sec. 5. (a) A person is entitled to a gasoline tax refund for the operation of concrete mixing equipment mounted on a motor vehicle if:

(1) the person is the purchaser of the gasoline and has paid the gasoline tax thereon; and

(2) the concrete mixing equipment is being operated by or for the purchaser for commercial use.

(b) For purposes of this section, "concrete mixing equipment" is the continuous movement apparatus mounted on a motor vehicle which is designed to mix concrete and other similar substances.

(c) For purposes of this section, thirty percent (30%) of gasoline placed into a fuel supply tank which operates both concrete mixing equipment and the engine propelling a motor vehicle is eligible for refund. *(Department of State Revenue; Reg 6-6-1.1-903(2)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2326)*

45 IAC 12-8-6 Refund for tax paid on gasoline purchased or used for operating farm tractors

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-903

Sec. 6. (a) A person is entitled to a gasoline tax refund for the operation of a farm tractor if:

(1) the person is the purchaser of the gasoline and has paid the gasoline tax thereon; and

(2) the farm tractor is being operated by or for the purchaser for commercial use.

(b) For purposes of this section, a "farm tractor" shall mean any vehicle designed and used primarily as a farm implement for drawing farm machinery, including plows, mowing machines, harvesters, and other implements of husbandry, used on a farm and when using the public highways in traveling from one field or farm to another, or to or from places of repairs. *(Department of State Revenue; Reg 6-6-1.1-903(3)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2327)*

45 IAC 12-8-7 Refund for tax paid on gasoline purchased or used for operating implements of husbandry

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-903

Sec. 7. (a) A person is entitled to a gasoline tax refund for the operation of implements of husbandry if:

(1) the person is the purchaser of the gasoline and has paid the gasoline tax thereon; and

(2) the implements of husbandry are being operated by or for the purchaser for commercial use;

(b) For purposes of his section, "implements of husbandry" shall mean every paint spray outfit; all livestock dipping equipment and seed cleaning and treating equipment, when mounted and transported upon a trailer using the public highways; every grain and bean separator; combine; corn picker; ensilage cutter; corn sheller; corn shredder; hay raker; manure spreader; portable saw mill; all well drilling machinery; all seeding, cultivating, and harvesting machinery; as well as self-propelled equipment, specially adapted, to be capable of both over-the-road and off-road usage; for the transporation and application of plant food materials and/or agricultural chemicals.

(c) Self-propelled equipment to which equipment, for the transportation and application of plant food materials and/or agricultural chemicals, is attached in a manner which allows for the subsequent removal of such attachments shall not be deemed to be specifically adapted to be capable of over-the-road and off-road usage for the transportation and application of plant food materials and/or agricultural chemicals. Therefore, such equipment shall not be deemed implements of husbandry. *(Department of State Revenue; Reg 6-6-1.1-903(3.1)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2327)*

45 IAC 12-8-8 Refund for tax paid on gasoline purchased or used for operating motorboats

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-903

Sec. 8. A person is entitled to a gasoline tax refund for the operation of motorboats if:

(1) the person is the purchaser of the gasoline and has paid the gasoline tax thereon; and

(2) the motorboats are not operated on an Indiana lake.

(Department of State Revenue; Reg 6-6-1.1-903(4)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2327)

45 IAC 12-8-9 Refund for tax paid on gasoline purchased or used for operating aircraft

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-903

Sec. 9. A person is entitled to a gasoline tax refund for the operation of aircraft if the person is the purchaser of the gasoline and has paid the gasoline tax thereon. *(Department of State Revenue; Reg 6-6-1.1-903(4)(020); filed Sep 19, 1983, 2:23 pm: 6 IR 2327)*

45 IAC 12-8-10 Refund for tax paid on gasoline purchased or used for cleaning or dyeing

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-903

Sec. 10. A person is entitled to a gasoline tax refund for gasoline used for cleaning or dyeing if:

(1) the person is the purchaser of the gasoline and has paid the gasoline tax thereon; and

(2) the gasoline is used by or for the purchaser for commercial use.

(Department of State Revenue; Reg 6-6-1.1-903(5)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2327)

45 IAC 12-8-11 Refund for tax paid on gasoline purchased or used for other commercial use

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-903

Sec. 11. (a) A person is entitled to a gasoline tax refund for other commercial use if:

(1) the person is the purchaser of the gasoline and has paid the gasoline tax thereon; and

(2) the gasoline is not used to propel motor vehicles operated in whole or in part on an Indiana highway.

(b) For purposes of this chapter *[IC 6-6-1.1]*, "commercial use" shall mean the consumption, depletion, or other expenditures of gasoline in this state except for destruction, loss, evaporation or shrinkage, which is related to the exchange of goods or services in contemplation of profit including non-proprietary functions of governmental agencies and not-for-profit organizations. *(Department of State Revenue; Reg 6-6-1.1-903(6)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2327)*

45 IAC 12-8-11.1 Refund for tax paid on gasoline purchased for proportional use

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-903

Sec. 11.1. (a) A gasoline taxpayer is entitled to a proportional use refund for tax paid on use of gasoline for a commercial purpose when the gasoline is placed into the fuel supply tank of the taxpayer's motor vehicle which has a common fuel supply reservoir for both locomotion on a public highway and a commercial purpose, which is exempt from the gasoline tax, and if the person is the purchaser of the gasoline and has paid the gasoline tax thereon.

(b) For purposes of subsection (a), proportional use refunds shall be presumed to be as follows:

(1) For tank trucks, twenty-four percent (24%) of gasoline placed into the fuel supply tank of a tank truck which operates both pumping equipment and the engine propelling the motor vehicle.

(2) For sanitation trucks, forty-one percent (41%) of gasoline placed into the fuel supply tank of a sanitation truck which operates both the refuse collection equipment and the engine propelling the motor vehicle.

(3) For refrigeration trucks, fifteen percent (15%) of gasoline placed into the fuel supply tank of a refrigeration truck which operates both the refrigeration equipment and the engine propelling the motor vehicle.

(4) For mobile cranes, forty-two percent (42%) of gasoline placed into the fuel supply tank of a mobile crane which operates both the crane and the engine propelling the motor vehicle.

(5) For bulk feed trucks, fifteen percent (15%) of gasoline placed into the fuel supply tank of a bulk feed truck which operates both the pumping equipment and the engine propelling the motor vehicle.

(6) For milk tank trucks, thirty percent (30%) of gasoline placed into the fuel supply tank of a milk tank truck which operates both the pumping equipment and the engine propelling the motor vehicle.

(7) For lime spreader trucks, fifteen percent (15%) of gasoline placed into the fuel supply tank of a lime spreader truck which

operates both the spreading equipment and the engine propelling the motor vehicle.
(8) For spray trucks, fifteen percent (15%) of gasoline placed into the fuel supply tank of a spray truck which operates both the spraying equipment and the engine propelling the motor vehicle.
(9) For seeder trucks, fifteen percent (15%) of gasoline placed into the fuel supply tank of a seeder truck which operates both the seeding equipment and the engine propelling the motor vehicle.
(10) For leaf trucks, twenty percent (20%) of gasoline placed into the fuel supply tank of a leaf truck which operates both the shredding equipment and the engine propelling the motor vehicle.
(11) For boom trucks or block booms, twenty percent (20%) of gasoline placed into the fuel supply tank of a boom truck or block boom which operates both the boom equipment and the engine propelling the motor vehicle.
(12) For service trucks with a jackhammer or pneumatic drill, fifteen percent (15%) of gasoline placed into the fuel supply tank of a service truck with a jackhammer or pneumatic drill which operates both the jackhammer or pneumatic drill and the engine propelling the motor vehicle.
(13) For trucks with a power take-off hydraulic winch, twenty percent (20%) of gasoline placed into the fuel supply tank of a truck with a power take-off hydraulic winch which operates both the hydraulic winch and the engine propelling the motor vehicle.
(14) For wreckers, ten percent (10%) of gasoline placed into the fuel supply tank of a wrecker which operates both the hoist and the engine propelling the motor vehicle.
(15) For semitractor wreckers, thirty-five percent (35%) of gasoline placed into the fuel supply tank of a semitractor wrecker which operates both the hoist and the engine propelling the motor vehicle.
(16) For car carriers, ten percent (10%) of gasoline placed into the fuel supply tank of a car carrier with a hydraulic winch which operates both the hydraulic winch and the engine propelling the motor vehicle.
(17) For dump trucks, twenty-three percent (23%) of gasoline placed into the fuel supply tank of a dump truck which operates both the dump mechanism and the engine propelling the motor vehicle.
(18) For semitractor and dump truck trailer combinations (commonly referred to as dump trailers), fifteen percent (15%) of gasoline placed into the fuel supply tank of a semitractor and dump trailer combination which operates both the dump mechanism and the engine propelling the motor vehicle.
(19) For semitractor and trailer combinations (commonly referred to as tank transports), fifteen percent (15%) of gasoline placed into the fuel supply tank of a semitractor and tank trailer combination which operates both the pumping equipment and the engine propelling the motor vehicle.
(20) For pneumatic tank trucks, fifteen percent (15%) of gasoline placed into the fuel supply tank of a pneumatic tank truck which operates both the pumping equipment and the engine propelling the motor vehicle.
(21) For sanitation receptacle carriers, commonly referred to as sanitation dump trailers, fifteen percent (15%) of gasoline placed into the fuel supply tank of a sanitation receptacle carrier (commonly referred to as a sanitation dump trailer) which operates both the winching or dumping mechanism and the engine propelling the motor vehicle.
(22) For line trucks or aerial lift trucks, twenty percent (20%) of gasoline placed into the fuel supply tank of a line truck or aerial lift truck which operates both the lift equipment and the engine propelling the motor vehicle.
(23) For digger-derrick trucks, twenty percent (20%) of gasoline placed into the fuel supply tank of a digger-derrick truck which operates both the other commercial equipment and the engine propelling the motor vehicle.
(24) For sewer cleaning trucks, sewer jets, or sewer vactors, thirty-five percent (35%) of gasoline placed into the fuel supply tank of a sewer cleaning truck, a sewer jet, or a sewer vactor which operates both the cleaning equipment and the engine propelling the motor vehicle.
(25) For hot asphalt distribution trucks, ten percent (10%) of gasoline placed into the fuel supply tank of a hot asphalt distribution truck which operates both the distribution equipment and the engine propelling the motor vehicle.
(26) For snow plow trucks, ten percent (10%) of gasoline placed into the fuel supply tank of a snow plow truck which operates both the plow and the engine propelling the motor vehicle.
(27) For carpet cleaning vans, fifteen percent (15%) of gasoline placed into the fuel supply tank of a carpet cleaning van which operates both the cleaning equipment and the engine propelling the motor vehicle.
(28) For salt spreaders or dump trucks with spreaders, fifteen percent (15%) of gasoline placed into the fuel supply tank of a salt spreader or a dump truck with a spreader which operates both the spreading equipment and the engine propelling the motor vehicle.
(29) For sweeper trucks, twenty percent (20%) of gasoline placed into the fuel supply tank of a sweeper truck which operates

both the sweeping equipment and the engine propelling the motor vehicle.

(30) For bookmobiles, twenty-five percent (25%) of gasoline placed into the fuel supply tank of a bookmobile which operates both the other commercial equipment and the engine propelling the motor vehicle.

(31) For buses, ten percent (10%) of gasoline placed into the fuel supply tank of a bus which has a common fuel reservoir which operates both the other commercial equipment and the engine propelling the motor vehicle.

(32) For fire trucks, forty-eight percent (48%) of gasoline placed into the fuel supply tank of a fire truck which operates both other commercial equipment and the engine propelling the motor vehicle.

(33) For super suckers, ninety percent (90%) of gasoline placed into the fuel supply tank of a super sucker which operates both other commercial equipment and the engine propelling the motor vehicle.

(c) Notwithstanding the provisions of subsection (b) (1-33) *[subsection (b)]*, gasoline taxpayers operating listed motor vehicles which consume greater portions of fuel from a common fuel reservoir for a commercial purpose other than locomotion on a public highway than provided in subsection (b) (1-33) *[subsection (b)]*, are eligible for a greater refund to be determined by the administrator after:

(1) a showing by the gasoline distributor or gasoline consumer of the portion of gasoline used for the operation of equipment other than locomotion on the public highway; and

(2) presentation of documents and information as requested by the administrator.

(d) Notwithstanding the provisions of subsection (b) (1-33) *[subsection (b)]*, gasoline taxpayers operating motor vehicles not listed in subsection (b) (1-33) *[subsection (b)]*, which consume portions of fuel from a common fuel reservoir for a commercial purpose other than locomotion on a public highway are eligible for a proportional use refund to be determined by the administrator after:

(1) a showing by the gasoline distributor or gasoline consumer of the portion of gasoline used for the operation of equipment other than for locomotion on the public highway; and

(2) presentation of documents and information as requested by the administrator.

(Department of State Revenue; Reg 6-6-1.1-903(7)(010); filed Apr 30, 1986, 3:32 p.m.: 9 IR 2190; filed Mar 6, 1991, 2:20 p.m.: 14 IR 1372)

45 IAC 12-8-12 Refund for tax paid on gasoline purchased or used for operating a taxicab

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-903

Sec. 12. (a) A person is entitled to a gasoline tax refund for the operation of a taxicab if:

(1) the person is the purchaser of the gasoline and has paid the gasoline tax thereon; and

(2) the taxicab is being operated by or for the purchaser for commercial use.

(b) For purposes of this section, a "taxicab" means a motor vehicle which is:

(1) designed to carry not more than seven (7) individuals, including the driver;

(2) held out to the public for hire at a fare regulated by municipal ordinance and based upon length of trips or time consumed;

(3) not operated over a definite route; and

(4) a part of a commercial enterprise in the business of providing taxicab service.

(Department of State Revenue; Reg 6-6-1.1-903(7)(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2328)

45 IAC 12-8-13 Refund for tax paid on gasoline purchased or used for designated purposes; interest

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-903; IC 6-8.1

Sec. 13. (a) To claim a refund under this section, a person must file a claim pursuant to the provisions set forth in section 904 of this chapter *[45 IAC 12-8-14]*.

(b) If a refund is not issued within ninety (90) days of filing of the verified statement and all supplemental information required by section 904 of this chapter *[45 IAC 12-8-14]*, the department shall pay interest as provided in Indiana Code 6-8.1.

(Department of State Revenue; Reg 6-6-1.1-903(020); filed Sep 19, 1983, 2:23 pm: 6 IR 2328)

45 IAC 12-8-14 Refund; required procedures to claim

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-904

Sec. 14. (a) To claim a refund under section 902 or 903 of this chapter *[45 IAC 12-8-2 through 45 IAC 12-8-3 or 45 IAC 12-8-4 through 45 IAC 12-8-13]*, a person must present to the administrator a statement made under penalties of perjury indicating the total amount of gasoline purchased or used for qualifying purposes under section 902 or 903 of this chapter *[45 IAC 12-8-2 through 45 IAC 12-8-3 or 45 IAC 12-8-4 through 45 IAC 12-8-13]*.

(b) In instances where the gasoline was purchased prior to January 1, 1984, the statement must be filed within six (6) months after the date the gasoline was purchased, and it must be accompanied by the original invoice or a certified copy. Such a copy must be certified by the supplier on forms prescribed by the administrator.

(c) In instances where the gasoline was purchased after December 31, 1983, the statement must be filed within one (1) year after the date the gasoline was purchased, and it must be accompanied by the original invoice or a certified copy. Such a copy must be certified by the supplier on forms prescribed by the administrator.

(d) The original invoice or certified copy must show either:

(1) that payment for the purchase has been made and the amount of tax has been paid on purchase; or

(2) that the gasoline was charged to a credit card approved by the administrator.

(e) The administrator may make any investigation considered necessary before refunding any gasoline taxes. *(Department of State Revenue; Reg 6-6-1.1-904(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2328)*

45 IAC 12-8-15 Tax credit in lieu of refund

Authority: IC 6-8.1-3-3
Affected: IC 6-3-3-7; IC 6-6-1.1-903; IC 6-6-1.1-905

Sec. 15. (a) In lieu of claiming a refund under section 904 of this chapter *[45 IAC 12-8-14]*, a person may claim the adjusted gross income tax credit provided by Indiana Code 6-3-3-7 for the purchase or use of gasoline for purposes listed in Indiana Code 6-6-1.1-903(1) through (6).

(b) The credit is limited to the amount of gasoline tax paid during the taxable year for which the person is filing with respect to gasoline purchased or used for such purposes.

(c) In instances where the gasoline was purchased prior to January 1, 1984, the claim must be filed in a manner prescribed by Indiana Code 6-3-3-7 with the annual state income tax return for the same taxable year during which the gasoline was purchased or used, and must be accompanied by the same verification required as if the person were filing under 45 IAC 12-8-14 withstanding the six (6) month filing requirement of 45 IAC 12-8-14(b).

(d) In instances where the gasoline was purchased after December 31, 1983, the claim must be filed in a manner prescribed by Indiana Code 6-3-3-7, and must be accompanied by the same verification required as if the person were filing under 45 IAC 12-8-14 withstanding the one (1) year filing requirement of 45 IAC 12-8-14(c). However, such claim may not be made after the due date for the adjusted gross income tax return for the same taxable year during which the gasoline was purchased or used. *(Department of State Revenue; Reg 6-6-1.1-905(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2328; errata, 6 IR 2416)*

45 IAC 12-8-16 Refund or deduction; payment of tax in error; warrant; payment by licensed distributor; requisites

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-907

Sec. 16. (a) If the administrator determines that a licensed distributor has paid gasoline tax in error, or is entitled to a refund, or is entitled to a deduction, the administrator may authorize a refund or deduction for the amount of gasoline tax paid.

(b) No refund shall be made under this section unless:

(1) the written claim is in the form and manner prescribed by the department; and

(2) the claim is filed within two (2) years after the date of the transaction for which the taxes were paid.

(Department of State Revenue; Reg 6-6-1.1-907(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2329)

45 IAC 12-8-17 Deduction in lieu of warrant for payment of refund
Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-908

Sec. 17. In lieu of authorizing a refund under section 907 of this chapter *[45 IAC 12-8-16]*, the administrator may permit a licensed distributor to deduct the claimed amount on the reports required by section 501 of this chapter *[45 IAC 12-5-1 through 45 IAC 12-5-3]*. *(Department of State Revenue; Reg 6-6-1.1-908(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2329)*

Rule 9. Statement of Tax Rate

45 IAC 12-9-1 Separate statement of tax rate on sales or delivery slips, bills
Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-1203

Sec. 1. A licensed distributor and all persons selling gasoline shall state the rate of the tax separately from the price of the gasoline on all sales or delivery slips, bills, and statements which indicate the price of gasoline. *(Department of State Revenue; Reg 6-6-1.1-1203(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2329)*

Rule 10. Evasion of Tax; Penalties

45 IAC 12-10-1 Submission of false information on invoice to support refund or credit; forfeiture
Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-1305

Sec. 1. A person who changes the date, name, gallonage, or other information shown on an invoice used to support a refund or a credit claim under sections 904 or 905 of this chapter *[45 IAC 12-8-14 or 45 IAC 12-8-15]*, or who submits false information on an invoice, forfeits the right to a refund or credit on that invoice. However, the administrator may approve a claim supported by an altered or changed invoice if the administrator finds that the change or alteration was not made to improperly obtain a refund. *(Department of State Revenue; Reg 6-6-1.1-1305(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2329)*

45 IAC 12-10-2 Fraudulent procurement of refund or credit; offense
Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-1306

Sec. 2. A person who makes a false statement in connection with a refund or credti application under section 904 or 905 of this chapter *[IC 6-6-1.1-904 or IC 6-6-1.1-905]*, or who collects or causes to be repaid to a person money to which that person is not entitled commits a Class B infraction. *(Department of State Revenue; Reg 6-6-1.1-1306(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2329)*

45 IAC 12-10-3 Submission of multiple invoices for refund; offense
Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-1307

Sec. 3. A person who submits an original invoice and a certified copy of an invoice, or two (2) or more certified copies of an invoice, to the administrator under section 904 of this chapter *[45 IAC 12-8-14]* for the same transaction commits a Class B misdemeanor. *(Department of State Revenue; Reg 6-6-1.1-1307(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2330)*

45 IAC 12-10-4 Failure to pay over tax collected to administrator; offense
Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-1308

Sec. 4. A person who receives or collects money as tax imposed under this chapter *[IC 6-6-1.1]* on gasoline on which such person has not paid the tax, and knowingly fails to pay the money to the administrator as required under this chapter *[IC 6-6-1.1]*, commits a Class D felony. *(Department of State Revenue; Reg 6-6-1.1-1308(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2330)*

45 IAC 12-10-5 Distributor; violations; offense

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-1309

Sec. 5. Except as otherwise provided by this chapter *[IC 6-6-1.1]*, a distributor who:

(1) recklessly fails to file the returns or statements and to pay the taxes as required by this chapter *[IC 6-6-1.1]*; or

(2) knowingly fails to keep correct records, books and accounts required by this chapter *[IC 6-6-1.1]* commits a Class B misdemeanor.

(Department of State Revenue; Reg 6-6-1.1-1309(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2330)

45 IAC 12-10-6 Use of untaxed gasoline; offense

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-1310

Sec. 6. A person who knowingly uses gasoline on which the tax has not been paid commits a Class B misdemeanor. *(Department of State Revenue; Reg 6-6-1.1-1310(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2330)*

45 IAC 12-10-7 Reckless violations; offense

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-1312

Sec. 7. A person who recklessly violates a provision of this chapter *[IC 6-6-1.1]* for which no specific penalty is provided commits a Class B misdemeanor. *(Department of State Revenue; Reg 6-6-1.1-1312(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2330)*

45 IAC 12-10-8 Evasion of tax; offense

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1-1313

Sec. 8. A person who violates sections 1309 through 1311 of this chapter *[IC 6-6-1.1-1309 through IC 6-6-1.1-1311]* with intent to evade the tax imposed by this chapter *[IC 6-6-1.1]* or to defraud the state commits a Class D felony. *(Department of State Revenue; Reg 6-6-1.1-1313(010); filed Sep 19, 1983, 2:23 pm: 6 IR 2330)*

ARTICLE 13. MOTOR CARRIER FUEL TAX

Rule 1. Definitions

45 IAC 13-1-1 Carrier defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1

Sec. 1. (a) For purposes of IC 6-6-4.1, the term "carrier" shall mean a person who operates or causes to be operated a commercial motor vehicle on any highway in Indiana.

(b) Except as otherwise provided in regulations 6-6-4.1-3(a)(010) through 6-6-4.1-3(e)(010) *[45 IAC 13-3-1, 45 IAC 13-3-2, 45 IAC 13-3-3, 45 IAC 13-3-4, 45 IAC 13-3-5]*, a person who "causes to be operated" a commercial motor vehicle on any Indiana highway is the person for whom the commercial motor vehicle is being driven. *(Department of State Revenue; Reg 6-6-4.1-1(a)(010); filed Jul 13, 1984, 9:25 am: 7 IR 2316)*

45 IAC 13-1-2 Commercial motor vehicle defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-1

Sec. 2. The term "commercial motor vehicle" shall mean any motor vehicle propelled by gasoline or special fuel which:

(1) is a passenger motor vehicle that has a seating capacity for more than nine (9) passengers, excluding the driver;

(2) is a road tractor;

(3) is a tractor truck; or

(4) is a truck having more than two (2) axles.

(Department of State Revenue; Reg 6-6-4.1-1(b)(010); filed Jul 13, 1984, 9:25 am: 7 IR 2316)

45 IAC 13-1-3 Motor vehicle defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-1; IC 6-6-4.1-4

Sec. 3. (a) A "motor vehicle" is a vehicle which is propelled by an internal combustion engine or motor and is designed for highway use.

(b) The term "motor vehicle" shall not be construed to include road construction or maintenance machinery, well-boring apparatus, ditch-digging apparatus, or other similar equipment, which are occasionally operated or moved over public highways.

(c) Vehicles which operate on rails are not motor vehicles.

(d) Vehicles designed and operated primarily as farm implements for drawing farm machinery are not motor vehicles.

(e) Tractors, plows, mowing machines, harvesters, Big A's, and other agricultural implements, including farm machinery when mounted and transported upon a trailer, are not motor vehicles when operated on a farm or when traveling upon public highways from one field to another, or to and from places of repair or supply.

(f) Vehicles exclusively operated on private property and not engaged in highway transportation are not motor vehicles.

(g) Upon determination by the administrator, the tax imposed under IC 6-6-4.1-4 will not apply to that portion of the fuel consumed on Indiana highways by motor vehicles with a common fuel reservoir for both locomotion along the highway and the operation of equipment with another commercial purpose even though such vehicles are motor vehicles for purposes of IC 6-6-4.1.

(1) For purposes of IC 6-6-4.1, commercial purpose means the exchange of goods and services in contemplation of profit; and

(2) includes non-proprietary functions of governmental agencies and not-for-profit organizations.

–EXAMPLES–

(1) A truck manufacturer tests trucks on a test track located on the manufacturer's property. Although the trucks are primarily adapted for highway transportation, they are not engaged in highway transportation and therefore, are not considered motor vehicles.

(2) In a mining operation haulage trucks are employed to transport coal from the pit to a crusher and then to a processing plant. The roadway between the pit and the crusher is a private roadway. The roadway between the crusher and the processing plant is a public highway. Haulage trucks operated exclusively for transportation on private property are not considered motor vehicles. However, haulage trucks which at one time or another travel upon a public highway are considered motor vehicles.

(Department of State Revenue; Reg 6-6-4.1-1(b)(020); filed Jul 13, 1984, 9:25 am: 7 IR 2316; filed Apr 30, 1986, 3:30 pm: 9 IR 2191)

45 IAC 13-1-4 Vehicles designed for highway use, defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-1

Sec. 4. (a) A vehicle is "designed for highway use" if it is primarily adapted for and engaged in highway transportation.

(b) Except for vehicles excluded under regulation 6-6-4.1-1(b)(020) *[45 IAC 13-1-3]*, all vehicles plated for general highway transportation are presumed to be primarily adapted for and engaged in highway transportation. *(Department of State Revenue; Reg 6-6-4.1-1(b)(030); filed Jul 13, 1984, 9:25 am: 7 IR 2316)*

45 IAC 13-1-5 Truck defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-1

Sec. 5. The term "truck" shall mean any motor vehicle which is primarily designed for the transporting of property. *(Department of State Revenue; Reg 6-6-4.1-1(b)(040); filed Jul 13, 1984, 9:25 am: 7 IR 2317)*

45 IAC 13-1-6 Road tractor defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-1

Sec. 6. The term "road tractor" shall mean any motor vehicle which is primarily designed for the drawing of vehicles and is not so constructed as to independently transport property thereon. *(Department of State Revenue; Reg 6-6-4.1-1(b)(050); filed Jul 13, 1984, 9:25 am: 7 IR 2317)*

45 IAC 13-1-7 Tractor truck defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-1

Sec. 7. (a) The term "tractor truck" shall mean any motor vehicle which is designed and used primarily for the drawing of other vehicles, and which is not constructed to carry property other than a part of the weight of the vehicle and load being drawn.

(b) A motor vehicle which is only used for recreational purposes is not considered a "tractor truck" under regulation 6-6-4.1-1(b)(010) *[45 IAC 13-1-2]*.

EXAMPLES

(1) A manufacturer primarily uses a pickup truck to draw fifth-wheel trailers to its dealers. The vehicle is a "tractor truck" since its primary use is to draw other vehicles.

(2) The same manufacturer uses a pickup truck to pull trailers attached to its bumper. The vehicle is not a "tractor truck" since it may carry other property in its bed.

(3) A pickup truck is used on weekends to pull a fifth-wheel camper and is used for transportation during the week. The vehicle is not a "tractor truck" since it only pulls other vehicles for recreational purposes.

(Department of State Revenue; Reg 6-6-4.1-1(b)(060); filed Jul 13, 1984, 9:25 am: 7 IR 2317)

45 IAC 13-1-8 Axle defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-1

Sec. 8. The term "axle" shall mean two or more wheels mounted in a single transverse vertical plane. *(Department of State Revenue; Reg 6-6-4.1-1(b)(070); filed Jul 13, 1984, 9:25 am: 7 IR 2317)*

45 IAC 13-1-9 Person defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-1

Sec. 9. (a) The term "person" shall mean any natural person, partnership, corporation, firm, association, or representative appointed by a court or the state, or its political subdivision.

(b) For purposes of IC 6-6-4.1-1, a corporate subsidiary shall be considered a "person".

(c) For purposes of IC 6-6-4.1-1, a corporate division shall not be considered a "person". *(Department of State Revenue; Reg 6-6-4.1-1(b)(080); filed Jul 13, 1984, 9:25 am: 7 IR 2317)*

45 IAC 13-1-10 Commissioner defined
Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-1

Sec. 10. The term "commissioner" shall mean the commissioner of the Indiana department of state revenue or any authorized agent thereof. *(Department of State Revenue; Reg 6-6-4.1-1(c)(010); filed Jul 13, 1984, 9:25 am: 7 IR 2317)*

45 IAC 13-1-11 Highway defined
Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-1

Sec. 11. (a) The term "highway" shall mean the entire width between the boundary lines of every thoroughfare that is open in any part to the use of the public for purposes of vehicular travel.

(b) For purposes of IC 6-6-4.1, a toll road is a highway. *(Department of State Revenue; Reg 6-6-4.1-1(e)(010); filed Jul 13, 1984, 9:25 am: 7 IR 2317)*

Rule 2. Applicability

45 IAC 13-2-1 Applicability of motor carrier fuel tax laws
Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1

Sec. 1. Unless exempt, any commercial motor vehicle, as defined in regulation 6-6-4.1-1(b)(010) *[45 IAC 13-1-2]*, driven on an Indiana highway is subject to the provisions set forth in IC 6-6-4.1. *(Department of State Revenue; Reg 6-6-4.1-2(a)(010); filed Jul 13, 1984, 9:25 am: 7 IR 2317)*

45 IAC 13-2-2 Exemptions from motor carrier fuel tax laws
Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-2; IC 36-1-2-13

Sec. 2. The following commercial motor vehicles are exempt from the application of IC 6-6-4.1:

(1) a commercial motor vehicle operated by this state, a political subdivision of this state as defined in IC 36-1-2-13, the United States, or an agency of states and the United States or an agency of two (2) or more states, in which this state participates;

(2) a commercial motor vehicle that has a seating capacity for more than nine (9) passengers, excluding the driver, which is used to transport school children to and from school, and to and from school athletic games or contests or other school functions, operated on behalf of a state or political subdivision of a state as defined in IC 36-1-2-13, or a private or privately operated school;

(3) a commercial motor vehicle used in casual bus operations if:

(A) the vehicle is operated by or on behalf of an organization which is exempt under section 501(c) of the Internal Revenue Code; or

(B) the vehicle is privately owned and is operated for recreational purposes;

–EXAMPLE–

A bus is owned by a church and is used to transport its members to and from various church activities. The bus is exempt from the provisions of IC 6-6-4.1 because it is used in casual bus operations.

(4) a commercial motor vehicle used in charter bus operations and not in operations covering regularly scheduled routes:

(A) if a vehicle is used only in operations covering regularly scheduled routes, it is subject to the provisions set forth in IC 6-6-4.1;

(B) if a vehicle is used in both charter bus operations and in operations covering regularly scheduled routes, only its operations attributable to the regularly scheduled routes are subject to the provisions set forth in Indiana Code 6-6-4.1.

(5) after January 1, 1984, trucks, trailers, or semitrailers and tractors so long as the commercial motor vehicle:

(A) is qualified to be registered and used as a farm truck, farm trailer, or farm semitrailer and tractor;
(B) is registered as such by the Indiana bureau of motor vehicles; and
(C) is not operated, either part time or incidentally, in the conduct of any commercial enterprise or in the transportation of farm products after such commodities have been delivered to the first point of delivery, where the commodities are weighed and title is transferred.

–EXAMPLE–

During a particular quarter a grain truck is used to transport grain to a farm bureau where the grain is weighed and sold but is not unloaded. The grain is then hauled to an elevator where it is unloaded. The grain truck does not qualify for an exemption because it was used to transport farm products after they were delivered to the first point of delivery. Therefore, the carrier is required to report the truck's total mileage for the entire quarter.

(Department of State Revenue; Reg 6-6-4.1-2(b)(010); filed Jul 13, 1984, 9:25 am: 7 IR 2318; filed Apr 30, 1986, 3:30 pm: 9 IR 2192)

Rule 3. Leased Motor Vehicles

45 IAC 13-3-1 Applicability to leased vehicles

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1

Sec. 1. Except as provided in regulations 6-6-4.1-3(b)(010) *[45 IAC 13-3-2]* and 6-6-4.1-3(b)(020) *[45 IAC 13-3-3]*, every commercial motor vehicle leased to a carrier is subject to the provisions of IC 6-6-4.1 to the same extent and in the same manner as a commercial motor vehicle owned by that carrier.

EXAMPLES

(1) An owner-operated *[sic.]* leases a commercial motor vehicle to a manufacturer and thereafter proceeds to operate the motor vehicle on behalf of the manufacturer. The manufacturer is responsible for reporting and paying the motor carrier fuel tax.
(2) A truck leasing company leases a tractor-trailer to a manufacturer who uses the vehicle to transport production from its plant. Since the motor vehicle is operated on behalf of the lessee, the manufacturer is responsible for reporting and paying the motor carrier fuel tax.
(3) An owner-operator leases a commercial motor vehicle to a trucking company and operates the vehicle on behalf of the company. The trucking company is responsible for reporting and paying the motor carrier fuel tax absent an agreement otherwise.

(Department of State Revenue; Reg 6-6-4.1-3(a)(010); filed Jul 13, 1984, 9:25 am: 7 IR 2318)

45 IAC 13-3-2 Lessor's duty to report and pay motor carrier fuel tax

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1

Sec. 2. (a) The department will consider a lessor of commercial motor vehicles to be a carrier, with respect to the operation of vehicles it leases to others, if the motor vehicle is not operated on behalf of the lessee, and if the lessor:

(1) supplies or pays for the motor fuel consumed by the vehicle; or

(2) makes rental or other charges calculated to include the cost of the motor fuel consumed by the vehicle.

(b) Any commercial motor vehicle leased from a lessor who is considered a carrier by the department must be included in the lessor's reports and liabilities under IC 6-6-4.1.

EXAMPLE

A manufacturer leases a motor vehicle to an operator who operates the motor vehicle on behalf of the manufacturer. The manufacturer also supplies the fuel consumed by the motor vehicle. The manufacturer is responsible for reporting and paying the motor carrier fuel tax.

(Department of State Revenue; Reg 6-6-4.1-3(b)(010); filed Jul 13, 1984, 9:25 am: 7 IR 2319)

45 IAC 13-3-3 Agreement between lessor and lessee for reporting and payment of tax
Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-3

Sec. 3. If the lessor and lessee stipulate in a written agreement that a specific party is to report and pay the motor carrier fuel tax on a leased commercial motor vehicle, the department will require that party to report and pay the tax on the vehicle instead of the party named in regulations 6-6-4.1-3(a)(010) *[45 IAC 13-3-1]* or 6-6-4.1-3(b)(010) *[45 IAC 13-3-2]*. *(Department of State Revenue; Reg 6-6-4.1-3(b)(020); filed Jul 13, 1984, 9:25 am: 7 IR 2319)*

45 IAC 13-3-4 Identification of carrier status
Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-3

Sec. 4. In order to substantiate or identify to other carriers and to the public the carrier status determined under IC 6-6-4.1-3, a lessor shall display in each leased commercial motor vehicle a reproduced copy of the Indiana motor carrier fuel tax annual permit under which the vehicle is being operated. *(Department of State Revenue; Reg 6-6-4.1-3(c)(010); filed Jul 13, 1984, 9:25 am: 7 IR 2319)*

45 IAC 13-3-5 Secondary liability for payment of tax
Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1

Sec. 5. (a) Regulations 6-6-4.1-3(a)(010) through 6-6-4.1-3(b)(020) *[45 IAC 13-3-1, 45 IAC 13-3-2, 45 IAC 13-3-3]* govern the primary liability under IC 6-6-4.1. If the party who is primarily liable fails, in whole or in part, to discharge the liability, all the parties to the lease transaction are responsible for compliance with IC 6-6-4.1 and are jointly and severally liable for payment of the tax despite any "hold harmless agreements" between the parties which attempt to hold one party harmless from any tax liability.

(b) The aggregate taxes collected by the department may not exceed the amount of tax that would have resulted from the operation of the leased motor vehicle by the owner, plus any applicable costs and penalties. *(Department of State Revenue; Reg 6-6-4.1-3(e)(010); filed Jul 13, 1984, 9:25 am: 7 IR 2319; filed Apr 30, 1986, 3:30 pm: 9 IR 2192)*

Rule 4. Imposition of Tax

45 IAC 13-4-1 Imposition of tax
Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-4

Sec. 1. A motor carrier fuel tax is imposed on the consumption of motor fuel by commercial motor vehicles operated by a carrier in its operations on highways in Indiana. *(Department of State Revenue; Reg 6-6-4.1-4(a)(010); filed Jul 13, 1984, 9:25 am: 7 IR 2319)*

45 IAC 13-4-2 Rate of tax
Authority: IC 6-8.1-3-3
Affected: IC 6-6-2.1; IC 6-6-4.1-4

Sec. 2. The rate of the motor carrier fuel tax is the same rate per gallon as the rate per gallon of the special fuel tax under IC 6-6-2.1. *(Department of State Revenue; Reg 6-6-4.1-4(a)(020); filed Jul 13, 1984, 9:25 am: 7 IR 2319; filed Apr 30, 1986, 3:30 pm: 9 IR 2192)*

45 IAC 13-4-3 Payment of tax
Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-4

Sec. 3. The tax imposed under IC 6-6-4.1-4 shall be paid quarterly by the carrier to the department on or before the last day of the month immediately following the end of the quarter. *(Department of State Revenue; Reg 6-6-4.1-4(a)(030); filed Jul 13, 1984, 9:25 am: 7 IR 2319)*

45 IAC 13-4-4 Amount of fuel consumed; fuel supply tank defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-1

Sec. 4. (a) All motor fuel placed into a fuel supply tank of a commercial motor vehicle is presumed to be consumed by that vehicle solely for the purpose of propelling the vehicle along highways.

(b) For purposes of regulation 6-6-4.1-4(a)(040) *[this section]*, the "fuel supply tank" of a commercial motor vehicle is the usual and ordinary tank from which motor fuel is withdrawn for the operation of the vehicle.

EXAMPLES

(1) A commercial motor vehicle with a single fuel supply tank uses fuel from the tank to supply an attached refrigeration unit. The motor carrier fuel tax is imposed on the entire amount of motor fuel consumed from the tank.

(2) That same commercial motor vehicle has a second fuel tank which is used solely to supply the refrigeration unit. The motor carrier fuel tax would not be imposed on the fuel consumed from the second fuel tank which supplies the refrigeration unit.

(3) A commercial motor vehicle is kept idling as it is unloaded. The motor fuel consumed while the vehicle idles has been consumed for the purpose of propelling the vehicle along highways.

(Department of State Revenue; Reg 6-6-4.1-4(a)(040); filed Jul 13, 1984, 9:25 am: 7 IR 2320)

45 IAC 13-4-5 Apportionment of fuel consumed on Indiana highways

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-4

Sec. 5. The amount of motor fuel consumed on Indiana highways is the total amount of motor fuel consumed by all of the carrier's commercial motor vehicles which are subject to the motor carrier fuel tax, in operations within and without Indiana, multiplied by a fraction. The numerator of that fraction is the total miles traveled on highways in Indiana by vehicles which are subject to the motor carrier fuel tax. The denominator of the fraction is the total miles traveled, within and without Indiana, by all of the carrier's commercial motor vehicles which are subject to the tax.

EXAMPLE

Taxpayer A is a private carrier with operations that extend nationwide. Some of its commercial motor vehicles never enter Indiana. In computing the amount of motor fuel consumed on Indiana highways, Taxpayer A should include all mileage and total gallonage of motor fuel consumed by commercial motor vehicles (as defined in regulation 6-6-4.1-1(b)(010) *[45 IAC 13-1-2]*), even if the vehicles never entered Indiana.

(Department of State Revenue; Reg 6-6-4.1-4(b)(010); filed Jul 13, 1984, 9:25 am: 7 IR 2320)

45 IAC 13-4-6 Calculation of tax payment

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1; IC 6-6-2.1; IC 6-6-4.1-4

Sec. 6. The amount of tax that a carrier shall pay for a particular quarter under IC 6-6-4.1-4 equals the product of the tax rate in effect for that quarter, multiplied by the amount of motor fuel consumed on Indiana highways upon which the carrier has not paid gasoline tax, under IC 6-6-1.1, or special fuel tax, under IC 6-6-2.1. *(Department of State Revenue; Reg 6-6-4.1-4(c)(010); filed Jul 13, 1984, 9:25 am: 7 IR 2320)*

45 IAC 13-4-7 Proportional imposition of tax

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-4

Sec. 7. (a) A motor carrier subject to the tax imposed under IC 6-6-4.1-4 is entitled to a proportional use exemption for tax paid on use of fuel for a commercial purpose when the fuel is placed into the fuel supply tank of the taxpayer's motor vehicle which has a common fuel supply reservoir for both locomotion on a public highway and a commercial purpose which is exempt from the motor carrier fuel tax, and if the person is the purchaser of the fuel and has paid the motor carrier fuel tax thereon. For purposes of the exemption, the fuel used for the commercial purpose other than locomotion of the motor vehicle must be used in Indiana.

(b) For purposes of subsection (a), proportional use exemptions shall be presumed to be as follows:

(1) For ready mix concrete trucks, thirty percent (30%) of the motor fuel which is consumed on Indiana highways by a ready mix concrete truck which has a common fuel reservoir for both locomotion on the highway and the operation of the concrete mixing equipment.

(2) For tank trucks, twenty-four percent (24%) of the motor fuel which is consumed on Indiana highways by a tank truck which has a common fuel reservoir for both locomotion on the highway and the operation of the pumping equipment.

(3) For sanitation trucks, forty-one percent (41%) of the motor fuel which is consumed on Indiana highways by a sanitation truck which has a common fuel reservoir for both locomotion on the highway and the operation of the refuse collection equipment.

(4) For refrigeration trucks, fifteen percent (15%) of the motor fuel which is consumed on Indiana highways by a refrigeration truck which has a common fuel reservoir for both locomotion on the highway and the operation of the refrigeration equipment.

(5) For mobile cranes, forty-two percent (42%) of the motor fuel which is consumed on Indiana highways by a mobile crane which has a common fuel reservoir for both locomotion on the highway and the operation of the crane.

(6) For bulk feed trucks, fifteen percent (15%) of the motor fuel which is consumed on Indiana highways by a bulk feed truck which has a common fuel reservoir for both locomotion on the highway and the operation of the pumping equipment.

(7) For milk tank trucks, thirty percent (30%) of the motor fuel which is consumed on Indiana highways by a milk tank truck which has a common fuel reservoir for both locomotion on the highway and the operation of the pumping equipment.

(8) For lime spreader trucks, fifteen percent (15%) of the motor fuel which is consumed on Indiana highways by a lime spreader truck which has a common fuel reservoir for both locomotion on the highway and the operation of the spreading equipment.

(9) For spray trucks, fifteen percent (15%) of the motor fuel which is consumed on Indiana highways by a spray truck which has a common fuel reservoir for both locomotion on the highway and the operation of the spraying equipment.

(10) For seeder trucks, fifteen percent (15%) of the motor fuel which is consumed on Indiana highways by a seeder truck which has a common fuel reservoir for both locomotion on the highway and the operation of the seeding equipment.

(11) For leaf trucks, twenty percent (20%) of the motor fuel which is consumed on Indiana highways by a leaf truck which has a common fuel reservoir for both locomotion on the highway and the operation of the shredding equipment.

(12) For boom trucks or block booms, twenty percent (20%) of the motor fuel which is consumed on Indiana highways by a boom truck or block boom which has a common fuel reservoir for both locomotion on the highway and the operation of the boom equipment.

(13) For service trucks with a jackhammer or pneumatic drill, fifteen percent (15%) of the motor fuel which is consumed on Indiana highways by service truck with a jackhammer or pneumatic drill which has a common fuel reservoir for both locomotion on the highway and the operation of the jackhammer or pneumatic drill.

(14) For trucks with a power take-off hydraulic winch, twenty percent (20%) of the motor fuel which is consumed on Indiana highways by a truck with a power take-off hydraulic winch which has a common fuel reservoir for both locomotion on the highway and the operation of the hydraulic winch.

(15) For wreckers, ten percent (10%) of the motor fuel which is consumed on Indiana highways by a wrecker which has a common fuel reservoir for both locomotion on the highway and the operation of the hoist.

(16) For semitractor wreckers, thirty-five percent (35%) of the motor fuel which is consumed on Indiana highways by a semitractor wrecker which has a common fuel reservoir for both locomotion on the highway and the operation of the hoist.

(17) For car carriers with a hydraulic winch, ten percent (10%) of the motor fuel which is consumed on Indiana highways by a car carrier with a hydraulic winch which has a common fuel reservoir for both locomotion on the highway and the operation of the hydraulic winch.

(18) For dump trucks, twenty-three percent (23%) of the motor fuel which is consumed on Indiana highways by a dump truck which has a common fuel reservoir for both locomotion on the highway and the operation of the dump mechanism.

(19) For semitractor and dump trailer combinations (commonly referred to as dump trailers), fifteen percent (15%) of the motor fuel which is consumed on Indiana highways by a semitractor and dump trailer combination which has a common fuel

reservoir for both locomotion on the highway and the operation of the dump mechanism.

(20) For semitractor and tank trailer combinations (commonly referred to as a tank transport), fifteen percent (15%) of the motor fuel which is consumed on Indiana highways by a semitractor and tank trailer combination which has a common fuel reservoir for both locomotion on the highway and the operation of the pumping equipment.

(21) For pneumatic tank trucks, fifteen percent (15%) of the motor fuel which is consumed on Indiana highways by a pneumatic tank truck which has a common fuel reservoir for both locomotion on the highway and the operation of the pumping equipment.

(22) For sanitation receptacle carriers (commonly referred to as a sanitation dump trailer), fifteen percent (15%) of the motor fuel which is consumed on Indiana highways by a sanitation receptacle carrier which has a common fuel reservoir for both locomotion on the highway and the operation of the winching or dumping mechanism.

(23) For line trucks or aerial lift trucks, twenty percent (20%) of the motor fuel which is consumed on Indiana highways by a line truck or aerial lift truck which has a common fuel reservoir for both locomotion on the highway and the operation of the lift equipment.

(24) For digger-derrick trucks, twenty percent (20%) of the motor fuel which is consumed on Indiana highways by a digger-derrick truck which has a common fuel reservoir for both locomotion on the highway and the operation of the other commercial equipment.

(25) For sewer cleaning trucks, sewer jets, or sewer vactors, thirty-five percent (35%) of the motor fuel which is consumed on Indiana highways by a sewer cleaning truck, a sewer jet, or a sewer vactor which has a common fuel reservoir for both locomotion on the highway and the operation of the cleaning equipment.

(26) For hot asphalt distribution trucks, ten percent (10%) of the motor fuel which is consumed on Indiana highways by a hot asphalt distribution truck which has a common fuel reservoir for both locomotion on the highway and the operation of the distribution equipment.

(27) For snow plow trucks, ten percent (10%) of the motor fuel which is consumed on Indiana highways by a snow plow truck which has a common fuel reservoir for both locomotion on the highway and the operation of the plow.

(28) For carpet cleaning vans, fifteen percent (15%) of the motor fuel which is consumed on Indiana highways by a carpet cleaning van which has a common fuel reservoir for both locomotion on the highway and the operation of the cleaning equipment.

(29) For salt spreaders or dump trucks with spreaders, fifteen percent (15%) of the motor fuel which is consumed on Indiana highways by a salt spreader or a dump truck with a spreader which has a common fuel reservoir for both locomotion on the highway and the operation of the spreading equipment.

(30) For sweeper trucks, twenty percent (20%) of the motor fuel which is consumed on Indiana highways by a sweeper truck which has a common fuel reservoir for both locomotion on the highway and the operation of the sweeping equipment.

(31) For bookmobiles, twenty-five percent (25%) of the motor fuel which is consumed on Indiana highways by a bookmobile which has a common fuel reservoir for both locomotion on the highway and the operation of the other commercial equipment.

(32) For buses, ten percent (10%) of the motor fuel which is consumed on Indiana highways by a bus which has a common fuel reservoir for both locomotion on the highway and the operation of the other commercial equipment.

(33) For fire trucks, forty-eight percent (48%) of the motor fuel which is consumed on Indiana highways by a fire truck which has a common fuel reservoir for both locomotion on the highway and the operation of the other commercial equipment.

(34) For super suckers, ninety percent (90%) of the motor fuel which is consumed on Indiana highways by a super sucker which has a common fuel reservoir for both locomotion on the highway and the operation of the other commercial equipment.

(c) Notwithstanding the provisions of subsection (b) (1-34) *[subsection (b)]*, motor carrier fuel taxpayers operating listed motor vehicles which consume greater portions of fuel from a common fuel reservoir for a commercial purpose other than locomotion on a public highway in Indiana than provided in subsection (b) (1-34) *[subsection (b)]* are eligible for a greater exemption to be determined by the administrator after:

(1) a showing by the person or carrier of the proportion of motor fuel used for the operation of equipment other than for locomotion on the public highway; and

(2) presentation of documents and information as requested by the administrator.

(d) Notwithstanding the provisions of subsection (b) (1-34) *[subsection (b)]*, motor carrier fuel taxpayers operating motor vehicles not listed in subsection (b) (1-34) *[subsection (b)]* which consume portions of fuel from a common fuel reservoir for a commercial purpose other than locomotion on a public highway in Indiana are eligible for a proportional use exemption to be determined by the administrator after:

(1) a showing by the person or carrier of the proportion of motor fuel used for the operation of equipment other than for locomotion on the public highway; and

(2) presentation of documents and information as requested by the administrator.

(Department of State Revenue; Reg 6-6-4.1-4(d)(010); filed Apr 30, 1986, 3:30 p.m.: 9 IR 2193; filed Mar 6, 1991, 2:20 p.m.: 14 IR 1374; errata, 14 IR 1626)

Rule 5. Credit Against Tax

45 IAC 13-5-1 Eligibility for credit

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-4; IC 6-6-4.1-6

Sec. 1. A carrier is entitled to a credit against the tax imposed under IC 6-6-4.1-4 if during a particular quarter the carrier, or a lessor operating under the carrier's annual permit, has:

(1) paid the Indiana gasoline tax or special fuel tax on motor fuel purchased in Indiana;

(2) consumed the motor fuel outside Indiana; and

(3) paid a similar gasoline, special fuel, or road tax, with respect to the fuel, to another state or jurisdiction.

(Department of State Revenue; Reg 6-6-4.1-6(a)(010); filed Jul 13, 1984, 9:25 am: 7 IR 2320; filed Apr 30, 1986, 3:30 pm: 9 IR 2193)

45 IAC 13-5-2 Agency relationships

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-6

Sec. 2. If a party to a written lease agreement is required to report and pay the Indiana motor carrier fuel tax, but another state or jurisdiction requires a different party to the lease agreement to report and pay a similar tax, the party who reports and pays the Indiana motor carrier fuel tax is entitled to a credit or refund so long as:

(1) the written lease agreement stipulates that an agency relationship exists between the parties for purposes of determining whether the parties are eligible for a credit against tax; and

(2) the parties' combined operations under the lease agreement have satisfied the credit requirements under regulation 6-6-4.1-6(a)(010) *[45 IAC 13-5-1]*.

EXAMPLE

Taxpayer A, a household mover, leases all of its commercial motor vehicles from owner-operators. Taxpayer A reports and pays the Indiana motor carrier fuel tax on motor fuel consumed by the leased vehicles. However, the owner-operators are required to pay Ohio road taxes on the fuel consumed by the vehicles. If the lease agreements between Taxpayer A and the owner-operators state that an agency relationship exists for purposes of determining eligibility for a credit, Taxpayer A is entitled to a credit or refund on Indiana-purchased motor fuel consumed in Ohio.

(Department of State Revenue; Reg 6-6-4.1-6(a)(020); filed Jul 13, 1984, 9:25 am: 7 IR 2320)

45 IAC 13-5-3 Overpurchases in Indiana

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-6

Sec. 3. A carrier may be entitled to a credit for motor fuel consumed in another state if it can prove that its commercial motor vehicle was capable of consuming Indiana-purchased motor fuel in that state. *(Department of State Revenue; Reg 6-6-4.1-6(a)(030); filed Jul 13, 1984, 9:25 am: 7 IR 2321; filed Apr 30, 1986, 3:30 pm: 9 IR 2193)*

45 IAC 13-5-4 Overpurchases in intervening states

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-6

Sec. 4. If a carrier is entitled to a credit in one or more states but has overpurchased motor fuel in an intervening state, the credit will be reduced by the amount of fuel overpurchased in that state.

EXAMPLE

For a particular quarter, a motor carrier overpurchased motor fuel in Indiana and underpurchased motor fuel in Tennessee. However, it also overpurchased motor fuel in Kentucky. The carrier's credit from Indiana-purchased motor fuel consumed in Tennessee will be reduced by the amount of motor fuel overpurchased in Kentucky.

(Department of State Revenue; Reg 6-6-4.1-6(a)(040); filed Jul 13, 1984, 9:25 am: 7 IR 2321)

45 IAC 13-5-5 Amount of credit

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-6

Sec. 5. The amount of credit for a quarter is equal to the Indiana gasoline tax or special fuel tax paid on motor fuel that:

(1) was purchased in Indiana;

(2) was consumed outside Indiana; and

(3) with respect to which the carrier paid a similar gasoline, special fuel or road tax to a state listed in regulation 6-6-4.1-6(a)(030) *[45 IAC 13-5-3]*.

(Department of State Revenue; Reg 6-6-4.1-6(b)(010); filed Jul 13, 1984, 9:25 am: 7 IR 2321)

45 IAC 13-5-6 Evidence to qualify for credit

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-6

Sec. 6. To qualify for a credit, the motor carrier shall maintain, and submit as requested by the department, evidence of Indiana gasoline or special fuel taxes paid, and of any payments made to other states. *(Department of State Revenue; Reg 6-6-4.1-6(c)(010); filed Jul 13, 1984, 9:25 am: 7 IR 2321)*

45 IAC 13-5-7 Application of credit to tax liability

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-4; IC 6-6-4.1-6

Sec. 7. A credit earned by a carrier in a particular quarter shall be applied against the carrier's tax liability under IC 6-6-4.1-4 for that quarter before any carryover may be applied. *(Department of State Revenue; Reg 6-6-4.1-6(d)(010); filed Jul 13, 1984, 9:25 am: 7 IR 2321)*

Rule 6. Credit Application; Refund; Interest

45 IAC 13-6-1 Credit defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-6; IC 6-6-4.1-7

Sec. 1. For purposes of IC 6-6-4.1-7, the “credit” of a carrier for any quarter is the excess of any credit under IC 6-6-4.1-6 to which the carrier is entitled for that quarter, over the motor carrier fuel tax due for that quarter. *(Department of State Revenue; Reg 6-6-4.1-7(a)(010); filed Jul 13, 1984, 9:25 am: 7 IR 2322; filed Apr 30, 1986, 3:30 pm: 9 IR 2194)*

45 IAC 13-6-2 Application of credit; expiration

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-4; IC 6-6-4.1-7

Sec. 2. (a) The credit for any quarter shall be allowed as a credit against tax imposed by IC 6-6-4.1-4 for which the carrier would otherwise be liable in the immediately following quarter, unless the carrier elects to claim a refund under regulation 6-6-4.1-

7(c)(010) *[45 IAC 13-6-3]*.

(b) If a credit for a particular quarter has not been applied as a credit against tax at the end of the immediately following quarter, the remaining credit may no longer be used as a credit against a tax liability. *(Department of State Revenue; Reg 6-6-4.1-7(b)(010); filed Jul 13, 1984, 9:25 am: 7 IR 2322; filed Apr 30, 1986, 3:30 pm: 9 IR 2194)*

45 IAC 13-6-3 Application for refund

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-7

Sec. 3. A carrier may obtain a refund of any credit not previously used to offset a tax liability by submitting to the department a properly completed application for refund within one (1) year of the end of the quarter in which the credit accrued. *(Department of State Revenue; Reg 6-6-4.1-7(c)(010); filed Jul 13, 1984, 9:25 am: 7 IR 2322; filed Apr 30, 1986, 3:30 pm: 9 IR 2194)*

45 IAC 13-6-4 Qualification for refund

Authority: IC 6-8.1-3-3
Affected: IC 6-6-1.1; IC 6-6-2.1; IC 6-6-4.1-7; IC 6-6-4.1-8

Sec. 4. (a) The department may not make a refund to a carrier until the carrier has furnished to the department proof of payment of the taxes imposed under IC 6-6-1.1 and IC 6-6-2.1, including:

(1) invoices, purchase tickets, computer print out or statement; and showing

(2) date of sale, name of purchaser (permittee), number of gallons, name of products, state tax rate charged, signature of purchaser; and

(3) name and address of vendor; and

(4) the furnishing of a surety bond under Indiana Code 6-6-4.1-8; and

(5) any other information the administrator may reasonably request.

(Department of State Revenue; Reg 6-6-4.1-7(c)(020); filed Jul 13, 1984, 9:25 am: 7 IR 2322; filed Apr 30, 1986, 3:30 pm: 9 IR 2194)

45 IAC 13-6-5 Interest on refunds

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-7; IC 6-8.1-9

Sec. 5. (a) The department will pay interest on any part of a refund that is not made within ninety (90) days of the date in which the application for refund is completed.

(b) The department will pay interest from the date of completion of the application for refund to a date determined by the department that does not precede the date on which the refund is made by more than thirty (30) days.

(c) The department will pay interest at the rate established under IC 6-8.1-9. *(Department of State Revenue; Reg 6-6-4.1-7(d)(010); filed Jul 13, 1984, 9:25 am: 7 IR 2322)*

45 IAC 13-6-6 Completion date of application for refund

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-8

Sec. 6. For purposes of regulations 6-6-4.1-7(c)(020) *[45 IAC 13-6-4]* and 6-6-4.1-7(d)(010) *[45 IAC 13-6-5]*, the date in which an application for refund is properly completed is the date in which all of the following have been completed:

(1) the filing of the refund application;

(2) the submission of any evidence or reports requested by the department; and

(3) the satisfaction of the refund requirements under IC 6-6-4.1-8.

(Department of State Revenue; Reg 6-6-4.1-7(d)(020); filed Jul 13, 1984, 9:25 am: 7 IR 2322; filed Apr 30, 1986, 3:30 pm: 9 IR 2195)

Rule 7. Bonds

45 IAC 13-7-1 Bond for credit refund

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1

Sec. 1. (a) A carrier shall, at the request of the department, furnish a surety bond, covering the entire period in which the credit accrued, in order to permit the department to make a refund without first auditing the carrier's records.

(b) The bond must be:

(1) in an amount of not less than two thousand dollars, or as determined by the department;

(2) in an amount of even thousands;

(3) payable to the state of Indiana;

(4) conditioned that the carrier will pay all taxes for which the carrier is or becomes liable under IC 6-6-4.1 from the date of the bond to thirty (30) days after either the carrier or the surety notifies the department of the bonds cancellation; and

(5) executed by a surety authorized under Indiana law.

(Department of State Revenue; Reg 6-6-4.1-8(010); filed Jul 13, 1984, 9:25 am: 7 IR 2323; filed Apr 30, 1986, 3:30 pm: 9 IR 2195)

Rule 8. Presumption of Consumption Rate

45 IAC 13-8-1 Insufficient records; presumption of consumption rate

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-9; IC 6-6-4.1-11

Sec. 1. (a) If there are no records showing the number of miles actually operated per gallon of motor fuel it is presumed that one (1) gallon of fuel is consumed for every four (4) miles traveled.

(b) This presumption does not apply to carriers who file joint reports under IC 6-6-4.1-11. *(Department of State Revenue; Reg 6-6-4.1-9(010); filed Jul 13, 1984, 9:25 am: 7 IR 2323)*

Rule 8.5. Surcharge Tax; Commercial Motor Vehicles

45 IAC 13-8.5-1 Imposition; rate; payment

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-4.5

Sec. 1. (a) A surcharge tax is imposed on the consumption of motor fuel by commercial motor vehicles operated by a carrier in its operations on highways in Indiana.

(b) The rate of the surcharge tax is eight cents ($0.08) per gallon.

(c) The tax imposed by IC 6-6-4.1-4.5 shall be paid quarterly to the department on or before the last day of the month immediately following the quarter. *(Department of State Revenue; Reg 6-6-4.1-4.5(a)(010); filed Apr 30, 1986, 3:30 pm: 9 IR 2195)*

45 IAC 13-8.5-2 Calculation of fuel consumption

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-4.5

Sec. 2. The amount of motor fuel consumed on Indiana highways is the total amount of motor fuel consumed by all the carrier's commercial motor vehicles which are subject to the motor carrier fuel tax, in operations within and without Indiana, multiplied by a fraction of which:

(1) the numerator is the total miles traveled on highways in Indiana by vehicles subject to the motor carrier fuel tax; and

(2) the denominator is the total miles traveled, within and without Indiana, by all of the carrier's commercial motor vehicles which are subject to the motor carrier fuel tax.

(Department of State Revenue; Reg 6-6-4.1-4.5(b)(010); filed Apr 30, 1986, 3:30 pm: 9 IR 2195)

45 IAC 13-8.5-3 Amount of tax
Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-4.5

Sec. 3. The amount of surcharge tax that a carrier shall pay for a particular quarter under IC 6-6-4.1-4.5 equals the product of the surcharge tax rate in effect for that quarter, multiplied by the amount of motor fuel consumed on Indiana highways. *(Department of State Revenue; Reg 6-6-4.1-4.5(c)(010); filed Apr 30, 1986, 3:30 pm: 9 IR 2195)*

45 IAC 13-8.5-4 Proportional fuel use
Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-4.5

Sec. 4. The tax imposed by IC 6-6-4.1-4.5 does not apply to the portion of motor fuel used to operate the equipment in or on the motor vehicles identified in 45 IAC 13-4-7 and in the proportions identified therein and as determined by the commissioner. *(Department of State Revenue; Reg 6-6-4.1-4.5(d)(010); filed Apr 30, 1986, 3:30 pm: 9 IR 2196)*

Rule 9. Quarterly Reports

45 IAC 13-9-1 Contents of reports; exemptions; incomplete reports
Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1; IC 6-8.1-10

Sec. 1. (a) Each carrier subject to the tax imposed under IC 6-6-4.1 shall submit to the department such quarterly reports as the department may require on or before the last day of the month immediately following that quarter.

(b) Quarterly reports are not required with respect to a vehicle for which a trip permit has been issued under IC 6-6-4.1-13.

(c) The filing of a substantially blank or an unsigned report does not constitute the filing of a report under IC 6-6-4.1-10, and will subject the carrier to penalties and interest under IC 6-8.1-10. *(Department of State Revenue; Reg 6-6-4.1-10(a)(010); filed Jul 13, 1984, 9:25 am: 7 IR 2323)*

45 IAC 13-9-2 Due date; late reports
Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-10; IC 6-8.1

Sec. 2. (a) The quarterly report prescribed by IC 6-6-4.1-10 must be postmarked no later than the last day of the month immediately following the end of the quarter being reported.

(b) Reports not filed or filed after the due date are subject to penalty and interest pursuant to the provisions set forth in IC 6-8.1. If the due date falls on a Saturday, a Sunday, a national legal holiday, or a statewide holiday, the due date is the next succeeding day that is not a Saturday, Sunday, or holiday. *(Department of State Revenue; Reg 6-6-4.1-10(a)(020); filed Jul 13, 1984, 9:25 am: 7 IR 2323)*

Rule 10. Joint Reports

45 IAC 13-10-1 Qualification to file joint reports; liability for tax
Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-11

Sec. 1. (a) Two (2) or more carriers regularly engaged in the transportation of passengers on through buses and through tickets in pooled service may make joint reports of their operations in Indiana in lieu of filing individual reports.

(b) The carriers making the joint reports are jointly and severally liable for any tax due. *(Department of State Revenue; Reg 6-6-4.1-11(a)(010); filed Jul 13, 1984, 9:25 am: 7 IR 2323)*

45 IAC 13-10-2 Contents of reports; credits and refunds

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-11

Sec. 2. (a) Joint reports must show:

(1) the total number of miles traveled in Indiana; and

(2) the total number of gallons of motor fuel purchased in Indiana.

(b) Credits or refunds resulting from operations reported on joint returns are not allowed as credits or refunds to any other carrier.

(c) Carriers filing joint reports shall permit all carriers engaged in pooled operations with them in Indiana to join them in filing joint reports. *(Department of State Revenue; Reg 6-6-4.1-11(b)(010); filed Jul 13, 1984, 9:25 am: 7 IR 2323)*

45 IAC 13-10-3 Presumption of consumption rate

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1

Sec. 3. There is a rebuttable presumption that the vehicles of carriers filing joint reports consume one (1) gallon of motor fuel for every six (6) miles traveled for purposes of IC 6-6-4.1. *(Department of State Revenue; Reg 6-6-4.1-11(c)(010); filed Jul 13, 1984, 9:25 am: 7 IR 2324)*

Rule 11. Annual and Trip Permits

45 IAC 13-11-1 Annual permits

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-12

Sec. 1. (a) Except as provided in regulations 6-6-4.1-13(010) *[45 IAC 13-11-4]* and 6-6-4.1-13(030) *[45 IAC 13-11-6]*, a motor carrier may only operate a commercial motor vehicle in Indiana if the carrier has been issued on an annual permit.

(b) The annual permit is effective from April 1 of each year through March 31 of the succeeding year.

(c) The department may extend the expiration date of the annual permit for no more than thirty (30) days.

(d) The department will only issue one annual permit per carrier which shall be kept at the address shown on the permit.

(e) A carrier shall keep a reproduced copy of the carrier's annual permit in each commercial motor vehicle that is operated by the carrier in Indiana.

(f) If an annual permit is lost or destroyed the department will issue a duplicate permit for a fee of five dollars ($5). *(Department of State Revenue; Reg 6-6-4.1-12(010); filed Jul 13, 1984, 9:25 am: 7 IR 2324)*

45 IAC 13-11-2 Application for annual permit; fee

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-10

Sec. 2. The department will issue an annual permit to any carrier who applies for a permit and pays an annual permit fee of twenty-five dollars ($25.00), unless:

(1) the carrier holds an unexpired permit;

(2) the carrier has failed to file a quarterly report required by IC 6-6-4.1-10; or

(3) the carrier has failed to pay the taxes imposed by IC 6-6-4.1.

(Department of State Revenue; Reg 6-6-4.1-12(020); filed Jul 13, 1984, 9:25 am: 7 IR 2324; filed Apr 30, 1986, 3:30 pm: 9 IR 2196)

45 IAC 13-11-3 Assignment of annual permit; change in ownership or name of business

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-12

Sec. 3. (a) An annual permit issued under IC 6-6-4.1-12 is not assignable and is valid only for the motor carrier in whose name it is issued.

(b) If there is a change in ownership of a business other than a corporation, the new owner must apply for a new annual permit within fifteen (15) days of the date of the change.

(c) If there is a change in the name of a business, the carrier must apply for a new annual permit within fifteen (15) days of the date of the change.

EXAMPLES

(1) A motor carrier operates as a sole proprietor. Upon the proprietor's death, the next of kin, who inherited the business, continue to operate the commercial motor vehicle. The new operators are required to apply for a new annual permit within fifteen (15) days of the date the estate is settled.

(2) Taxpayer A is a motor carrier who owns and operates a commercial motor vehicle. Taxpayer A retires. Taxpayer B assumes ownership and continues to operate the vehicle under the prior annual permit. Since the annual permit was issued to Taxpayer A, Taxpayer B is operating without an annual permit and, therefore, is operating illegally.

(Department of State Revenue; Reg 6-6-4.1-12(030); filed Jul 13, 1984, 9:25 am: 7 IR 2324)

45 IAC 13-11-4 Trip permits

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1

Sec. 4. (a) A motor carrier may, in lieu of obtaining an annual permit and paying the taxes imposed under IC 6-6-4.1, obtain a trip permit from the department authorizing the carrier to operate a commercial motor vehicle for a period of five (5) consecutive days.

(b) The department will not issue a trip permit to a carrier if:

(1) the carrier has been issued four (4) trip permits within the preceding twelve (12) months;

(2) a valid annual permit has been held by the carrier within the preceding twelve (12) months.

(c) A separate trip permit is required for each commercial motor vehicle operated by a carrier.

(d) The fee for a trip permit is fifty dollars ($50). *(Department of State Revenue; Reg 6-6-4.1-13(010); filed Jul 13, 1984, 9:25 am: 7 IR 2324; filed Apr 30, 1986, 3:30 pm: 9 IR 2196)*

45 IAC 13-11-5 Reporting exemption for trip permit holders

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-10; IC 6-6-4.1-13

Sec. 5. The quarterly report, otherwise required under IC 6-6-4.1-10, is not required with respect to a commercial motor vehicle for which a trip permit has been issued. *(Department of State Revenue; Reg 6-6-4.1-13(020); filed Jul 13, 1984, 9:25 am: 7 IR 2325)*

45 IAC 13-11-6 Temporary authorization

Authority: IC 6-8.1-3-3
Affected: IC 6-1.1-8-35; IC 6-6-4.1-13

Sec. 6. (a) The department may issue a temporary written authorization if unforeseen or uncertain circumstances require the operation of a commercial motor vehicle for which neither an annual permit nor a trip permit has been obtained.

(b) A temporary authorization may be issued only if:

(1) the department finds that undue hardship would otherwise result;

(2) the carrier has paid the Indiana indefinite situs tax, imposed under IC 6-1.1-8-35, for any or all prior years; and

(3) the carrier has not held a valid annual permit within the preceding twelve (12) months.

(c) A separate temporary authorization is required for each commercial motor vehicle operated by a carrier.

(d) A carrier who obtains a temporary authorization shall:

(1) pay the trip permit fee at the time the temporary authorization is issued; or

(2) subsequently obtain an annual permit.

(Department of State Revenue; Reg 6-6-4.1-13(030); filed Jul 13, 1984, 9:25 am: 7 IR 2325)

Rule 12. Suspension or Revocation; Permits, Temporary Authorization

45 IAC 13-12-1 Failure to report or pay tax

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1; IC 6-8.1-1-1

Sec. 1. (a) The commissioner may suspend or revoke any annual permit, trip permit, or temporary authorization issued to a carrier, if the carrier:

(1) fails to file a quarterly report required by IC 6-6-4.1-10;

(2) fails to pay the tax imposed under IC 6-6-4.1-4;

(3) fails to pay the tax imposed under IC 6-6-4.1-4.5;

(4) files a report after its due date; or

(5) fails to file all tax returns or information reports or to pay all taxes, penalties, and interest for any of the listed taxes under IC 6-8.1-1-1.

(b) A carrier's suspension may be lifted when the carrier has:

(1) filed all applicable reports;

(2) paid all outstanding taxes or permit fees imposed under IC 6-6-4.1; and

(3) paid all outstanding penalties and interest; and

(4) paid all taxes, penalties, and interest for any of the listed taxes as defined by IC 6-8.1-1-1.

(c) The department will notify the Indiana state police when a suspension or revocation has occurred, or when it has been lifted. *(Department of State Revenue; Reg 6-6-4.1-17(010); filed Jul 13, 1984, 9:25 am: 7 IR 2325; filed Apr 30, 1986, 3:30 pm: 9 IR 2196)*

Rule 13. Violations

45 IAC 13-13-1 False statements; fraudulent transactions

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1

Sec. 1. (a) A person who knowingly makes a false statement or knowingly presents a fraudulent receipt for the sale of motor fuel, for the purpose of:

(1) obtaining;

(2) attempting to obtain; or

(3) assisting another person to obtain or attempt to obtain:

a credit, refund or reduction of liability for the tax imposed under IC 6-6-4.1, commits a Class C infraction.

(b) A carrier who knowingly violates IC 6-6-4.1 commits a Class C infraction, except for a violation covered by IC 6-6-4.1-17. *(Department of State Revenue; Reg 6-6-4.1-18(010); filed Jul 13, 1984, 9:25 am: 7 IR 2325)*

ARTICLE 14. SUPPLEMENTAL HIGHWAY USER FEE

Rule 1. Definitions

45 IAC 14-1-1 Carrier defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1-1; IC 6-6-4.1-3

Sec. 1. (a) For purposes of IC 6-6-7-1 *[Repealed by P.L.19-1986, SECTION 16, as added by P.L.59-1985, SECTION 21.]*, the term "carrier" shall mean a person who operates or causes to be operated a commercial motor vehicle on any highway in Indiana.

(b) A person who "causes to be operated a commercial motor vehicle on any Indiana highway" is the person for whom the commercial motor vehicle is being driven. *(Department of State Revenue; Reg 6-6-7-1(010); filed Apr 30, 1986, 3:26 pm: 9 IR 2197)*

45 IAC 14-1-2 Person defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1

Sec. 2. (a) The term "person" shall mean any natural person, partnership, corporation, firm, association, or representative appointed by a court or the state, or its political subdivision.

(b) For purposes of IC 6-6-7-1 *[Repealed by P.L.19-1986, SECTION 16, as added by P.L.59-1985, SECTION 21.]*, a corporate subsidiary shall be considered a "person".

(c) For purpose *[sic.]* of IC 6-6-7-1 *[Repealed by P.L.19-1986, SECTION 16, as added by P.L.59-1985, SECTION 21.]*, a corporate division shall not be considered a "person" or carrier. *(Department of State Revenue; Reg 6-6-7-1(020); filed Apr 30, 1986, 3:26 pm: 9 IR 2197)*

45 IAC 14-1-3 Motor vehicle defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1

Sec. 3. (a) The term "commercial motor vehicle" shall mean any motor vehicle propelled by gasoline or special fuel which:

(1) is a passenger motor vehicle that has a seating capacity for more than nine (9) passengers, excluding the driver;

(2) is a road tractor;

(3) is a tractor truck; or

(4) is a truck having more than two (2) axles.

(b) Any "commercial motor vehicle" includes any commercial vehicle subject to IC 6-6-4.1 and the regulations duly adopted under that chapter *[45 IAC 13]*. *(Department of State Revenue; Reg 6-6-7-2(010); filed Apr 30, 1986, 3:26 pm: 9 IR 2197)*

45 IAC 14-1-4 Commissioner defined

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1

Sec. 4. The term "commissioner" shall mean the commissioner of the Indiana department of revenue and any authorized agent thereof. *(Department of State Revenue; Reg 6-6-7-3(010); filed Apr 30, 1986, 3:26 pm: 9 IR 2197)*

Rule 2. Imposition of Tax

45 IAC 14-2-1 Amount of fee

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1

Sec. 1. The annual supplemental highway user fee is fifty dollars ($50) per vehicle per year. *(Department of State Revenue; Reg 6-6-7-6(a)(010); filed Apr 30, 1986, 3:26 pm: 9 IR 2197)*

45 IAC 14-2-2 Payment of fee

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1

Sec. 2. (a) The annual supplemental highway user fee shall be paid by the person or carrier who operates or causes to operate a commercial motor vehicle on a highway in Indiana; and

(1) the fee must be paid for each commercial motor vehicle operated on an Indiana highway; and

(2) the fee must be paid for each commercial motor vehicle which uses an Indiana highway whether it is registered in Indiana or in any other state, territory or foreign country, and regardless of whether it is engaged in intrastate or interstate commerce.

(b) Only one fee shall be paid per commercial motor vehicle per year. *(Department of State Revenue; Reg 6-6-7-6(a)(020); filed Apr 30, 1986, 3:26 pm: 9 IR 2197)*

Rule 3. Permit and Emblem

45 IAC 14-3-1 Application; issuance; emergency authorization

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1

Sec. 1. (a) The commissioner shall issue a permit and emblem to a carrier upon the carrier:

(1) making application for the permit and emblem on Form MF-690 or MF-690A furnished by the commissioner; and

(2) making payment of $50 except as provided in subsection (3) below;

(3) for the period beginning on July 1, 1985, and ending on March 31, 1986, and only for that period, the fee shall be prorated monthly and shall be $37.50 for those permits and emblems issued effective July 1, 1985, through March 31, 1986;

(4) furnishing all of the requested information on the application;

(5) furnishing any additional information requested by the commissioner which is reasonably needed for carrying out the provisions of IC 6-6-7 *[Repealed by P.L.19-1986, SECTION 16, as added by P.L.59-1985, SECTION 21.]*.

(b) A carrier may obtain an emergency 21 day authorization in the form of a letter from an authorized permitting service upon payment of the $50 fee and submitting the information required on Form MF-690A. Upon receipt of the necessary information by the commissioner the official permit and emblem will be issued to the carrier. *(Department of State Revenue; Reg 6-6-7-7(a)(010); filed Apr 30, 1986, 3:26 pm: 9 IR 2197)*

45 IAC 14-3-2 Term of permit; extension

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1

Sec. 2. (a) A carrier may only operate a commercial motor vehicle in Indiana for which the vehicle has been issued a permit and an emblem by the commissioner.

(b) The annual permit and emblem is effective from April 1 of each year through March 31 of the succeeding year; however

(1) the commissioner may extend the expiration date of the annual permit for no more than thirty (30) days; and

(2) if an extension of the expiration date is granted by the commissioner, the carrier shall continue to display the emblem for which the extension was granted;

(3) during the month of March the carrier shall display either the emblem valid through March 31 or the emblem issued to the commercial motor vehicle for the ensuing twelve (12) months.

(Department of State Revenue; Reg 6-6-7-7(b)(010); filed Apr 30, 1986, 3:26 pm: 9 IR 2198)

45 IAC 14-3-3 Permit and emblem; display

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1; IC 9-20-9-1

Sec. 3. (a) The permit and emblem issued by the commissioner shall be kept with the vehicle for which it was issued:

(1) the permit must be carried in the vehicle for which it was issued in a place where it is accessible for inspection;

(2) the emblem must be displayed on the driver's side of the power unit at all times and must be affixed to a dry, clean unwaxed surface by the adhesive on the emblem in a manner such that it cannot be removed without the emblem being destroyed; except;

(3) in situations where a person or carrier is engaged in transport operations as defined in IC 9-1-4-18(c) *[IC 9-1-4-18 repealed by P.L.2-1991, SECTION 109.]*, or properly bears dealer plates, the emblem need not be affixed but instead must be clearly displayed on the driver's side of the power unit of the driven vehicle, whether singly or in combination;

(4) upon destruction or voiding of the emblem, the emblem must be replaced immediately by the procedure outlined in IC 6-6-7-8 *[Repealed by P.L.19-1986, SECTION 16, as added by P.L.59-1985, SECTION 21.]* and 45 IAC 14-3-4;

(5) the emblem must be legible and completely visible at all times with no obstructions.

(b) The permit and emblem may not be used for or displayed on any vehicle except that for which the permit was issued.

(c) The permit must be produced for inspection upon the demand of any law enforcement officer or agent of the department of revenue. *(Department of State Revenue; Reg 6-6-7-8(010); filed Apr 30, 1986, 3:26 pm: 9 IR 2198)*

45 IAC 14-3-4 Replacement

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1

Sec. 4. (a) Upon application by the person or carrier on Form MF-690R, the commissioner may issue a new permit and emblem to replace one already issued.

(b) The carrier or person applying for a replacement permit and emblem must submit with the application:

(1) the old permit; and

(2) the old emblem; or

(3) if the original permit or emblem has been lost or destroyed, a detailed affidavit stating the circumstances whereby the emblem or permit was lost or destroyed. If the loss or destruction was due to theft, vandalism, or highway accident, a copy of the police report on the incident which brought about the loss or destruction should be attached to the application. If there was no police report, any other documentation which is applicable to the situation should be included.

(c) The charge for the issuing of a replacement permit and emblem is two dollars ($2.00).

(d) The carrier may obtain an emergency twenty-one (21) day authorization in the form of an emergency authorization letter from an authorized permitting service upon payment of two dollars ($2.00) per vehicle, and submission of the information required on Form MF-690R; and

(1) submitting to the commissioner the old emblem and permit; and

(2) the affidavit described in 45 IAC 14-3-3 which will be wired to the applicant by the permitting service along with the other documents required; and

(3) the emergency authorization letter will be valid for twenty-one (21) days. There will be no extensions of this time. *(Department of State Revenue; Reg 6-6-7-8(020); filed Apr 30, 1986, 3:26 pm: 9 IR 2198)*

45 IAC 14-3-5 Revocation; reinstatement

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1

Sec. 5. (a) The commissioner, upon notice and hearing may revoke the fee permit held by the person or carrier if they are in violation of this chapter.

(b) The commissioner will notify the state police when a permit has been revoked and when a permit has been reinstated. *(Department of State Revenue; Reg 6-6-7-9(a)(010); filed Apr 30, 1986, 3:26 pm: 9 IR 2199)*

45 IAC 14-3-6 Impoundment of vehicle

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1

Sec. 6. (a) The commissioner may impound the commercial motor vehicle of a carrier when:

(1) the permit of the carrier has been revoked; and

(2) the carrier continued to operate the motor vehicle after having been notified of the revocation by the commissioner.

(b) The commissioner may retain possession of the impounded vehicle until:

(1) the person or carrier fully complies with the provisions of IC 6-6-7 *[Repealed by P.L.19-1986, SECTION 16, as added by P.L.59-1985, SECTION 21.]*; and

(2) pays all costs incurred with the impounding and storage of the motor vehicle which has been impounded under IC 6-6-7-9 *[Repealed by P.L.19-1986, SECTION 16, as added by P.L.59-1985, SECTION 21.]*.

(c) The cargo of the impounded vehicle may be released by the commissioner if a properly authorized vehicle in compliance with the provisions of this chapter is sent to transfer the cargo. *(Department of State Revenue; Reg 6-6-7-9(b)(010); filed Apr 30, 1986, 3:26 pm: 9 IR 2199)*

45 IAC 14-3-7 Reinstatement

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1

Sec. 7. (a) The commissioner shall reinstate a revoked permit when the carrier:

(1) pays the fee plus penalty and interest owed; and

(2) is in compliance with IC 6-6-7 *[Repealed by P.L.19-1986, SECTION 16, as added by P.L.59-1985, SECTION 21.]*; and

(3) pays all costs incurred with the impounding and storage of the motor vehicle if the vehicle has been impounded under IC 6-6-7-9 *[Repealed by P.L.19-1986, SECTION 16, as added by P.L.59-1985, SECTION 21.]* and 45 IAC 14-3-6.

(Department of State Revenue; Reg 6-6-7-9(c)(010); filed Apr 30, 1986, 3:26 pm: 9 IR 2199)

Rule 4. Violations and Penalties

45 IAC 14-4-1 False statements; operation without permit and emblem

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1

Sec. 1. (a) A person or carrier who knowingly makes a false statement for the purpose of:

(1) obtaining;

(2) attempting to obtain; or

(3) assisting another person to obtain or attempt to obtain a permit, emblem or a refund of any fee collected under IC 6-6-7 *[Repealed by P.L.19-1986, SECTION 16, as added by P.L.59-1985, SECTION 21.]*, commits a Class B misdemeanor.

(b) A person or carrier who knowingly operates a commercial motor vehicle without having both a permit and an emblem commits a Class B misdemeanor. *(Department of State Revenue; Reg 6-6-7-11(a)(010); filed Apr 30, 1986, 3:26 pm: 9 IR 2199)*

45 IAC 14-4-2 Evasion of fee

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1

Sec. 2. A person or carrier who knowingly commits any of the acts listed under IC 6-6-7-11 *[Repealed by P.L.19-1986, SECTION 16, as added by P.L.59-1985, SECTION 21.]* and 45 IAC 14-4-1 with the intent to evade the supplemental highway user fee imposed by IC 6-6-7 *[Repealed by P.L.19-1986, SECTION 16, as added by P.L.59-1985, SECTION 21.]* or to defraud this state commits a Class D felony. *(Department of State Revenue; Reg 6-6-7-11(a)(010); filed Apr 30, 1986, 3:26 pm: 9 IR 2199)*

45 IAC 14-4-3 Separate offenses

Authority: IC 6-8.1-3-3
Affected: IC 6-6-4.1

Sec. 3. Each day during which a person or carrier knowingly operates a commercial motor vehicle without the fee permit and emblem and in violation of IC 6-6-7-11 *[Repealed by P.L.19-1986, SECTION 16, as added by P.L.59-1985, SECTION 21.]* constitutes a separate offense. *(Department of State Revenue; Reg 6-6-7-11(b)(010); filed Apr 30, 1986, 3:26 pm: 9 IR 2199)*

ARTICLE 15. TAX ADMINISTRATION; GENERAL PROVISIONS

Rule 1. Definitions; Applicability

45 IAC 15-1-1 "Department" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-1-2

Sec. 1. The term "department" means and includes the Indiana department of state revenue, the Indiana department of revenue and the department of revenue. *(Department of State Revenue; 45 IAC 15-1-1; filed Oct 1, 1987, 1:30 pm: 11 IR 534)*

45 IAC 15-1-2 "Due date" defined

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-1-4; IC 6-8.1-5-2; IC 6-8.1-6-1; IC 6-8.1-9-1; IC 6-8.1-10-1; IC 6-8.1-10-2

Sec. 2. "Due date" means the last date on which a particular act may be performed and be on time. If an extension of time is allowed for performing a particular act, the due date is the last day of the extension period. An extension of time for filing is authorized under IC 6-8.1-6-1 under several circumstances. However, the extension does not extend the time for payment of the tax due. If at least 90% of the tax that is reasonably expected to be due is paid by the original due date (see 45 IAC 15-6-1), the tax that remains unpaid will not accrue late payment penalties until the extension period has ended. However, the tax that remains unpaid during the extension period accrues interest from the original due date.

Therefore, the due date cannot be extended for the payment of tax, but can be extended for the filing of a return. If an extension of time is permitted for filing a return, the statute of limitations is also extended for purposes of filing a claim for refund or for the issuance of an assessment. *(Department of State Revenue; 45 IAC 15-1-2; filed Oct 1, 1987, 1:30 pm: 11 IR 534)*

Rule 2. Department Organization

45 IAC 15-2-1 Establishment

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-2-1

Sec. 1. The department was established for the purpose of administering, collecting and enforcing all taxes placed under its authority. *(Department of State Revenue; 45 IAC 15-2-1; filed Oct 1, 1987, 1:30 pm: 11 IR 534)*

Rule 3. Duties; Powers; Responsibilities

45 IAC 15-3-1 Employees; hiring; compensation; conflict of interest (Repealed)

Sec. 1. *(Repealed by Department of State Revenue; filed Aug 22, 1995, 5:00 p.m.: 19 IR 6)*

45 IAC 15-3-1.5 Employees; conflict of interest

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-1-3; IC 6-8.1-3-2

Sec. 1.5. (a) A former employee of the department may not act in any capacity for a person (except for the department, another state agency, or the federal government) if:

(1) it has been two (2) years or less since employment with the department was terminated; and

(2) the employee is representing the person in a matter that was pending in the department during the period of the former employee's employment.

(b) As used in subsection (a), "person" has the same meaning set forth in IC 6-8.1-1-3.

(c) As used in subsection (a), "matter" means any function placed under the authority of the department and includes, but is not limited to, the following:

(1) A tax assessment.

(2) A claim for refund.

(3) An investigation.

(4) A judicial proceeding.

(5) An application.

(6) A license.

The term does not include a proposal or consideration of legislation; a proposal, consideration, adoption, or implementation of a rule or an administrative policy of general application; or any other activity that lacks an identifiable party involved in a specific transaction before or with the department.

(d) As used in subsection (a), "pending in the department" means that the matter arose during the period of the former employee's employment. For example, the filing of a tax return (whether or not it is examined and whether or not the examination results in an assessment or refund) is a matter pending in the department. *(Department of State Revenue; 45 IAC 15-3-1.5; filed Aug 22, 1995, 5:00 p.m.: 19 IR 6)*

45 IAC 15-3-2 Rules and regulations

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-3-3; IC 6-8.1-5-1

Sec. 2. (a) The department has the authority to promulgate rules that are consistent with the statutory provisions of the listed taxes.

(b) An interpretation of the statutory provisions governing the listed taxes, made by a court of competent jurisdiction, which conflicts with rules promulgated by the department, will render that rule, or portion of a rule, null and void, and will become the official interpretation of the department, effective upon the date of issuance of the court's decision. If such decision is appealed by the department, the interpretation will become effective when such decision becomes final.

(c) As a general rule, the modification of a rule will not be applied retroactively. If a rule is later found to be inconsistent with changes in the law by statute or by decisions of a court of precedence, the rule will not protect a taxpayer in the same or subsequent years once the rule has been determined to be inconsistent with the law.

(d)(1) The department provides advice to taxpayers in many different forms. Rulings are issued to individual taxpayers based upon specific factual situations. Applications for rulings should be directed to the administrator of the particular division of tax from which the taxpayer is requesting a ruling. All relevant facts must be submitted in writing for such a determination to be made. The department will not issue a ruling based upon either an oral request or a written request from an anonymous taxpayer.

(2) As a general rule, the revocation or modification of a ruling will not be applied retroactively with respect to the taxpayer to whom the ruling was originally issued or to a taxpayer whose tax liability was directly involved in such a ruling. Under circumstances where a ruling to a taxpayer is revoked with retroactive effect, the notice to such taxpayer will set forth the grounds upon which the revocation is being made and the extreme circumstance under which revocation is being applied retroactively. This retroactive revocation is decided upon a case-by-case basis taking into account all relevant facts and circumstances. The department may exercise its discretion to retroactively rescind or modify rulings in the following extreme circumstances, which are not all inclusive:

(A) There was a misstatement or omission of material facts.

(B) The facts, as developed after the ruling, were materially different from the facts on which the department based its ruling.

(C) There was a change in the applicable statute, case law or regulation.

(D) The taxpayer directly involved in the ruling did not act in good faith.

Taxpayers are cautioned that changes in the law and final decisions of Appellate Court, Supreme Court and Indiana Tax Court cases are notification to the taxpayer of a possible revocation of a ruling, effective from the date of the court decision or change in the law within the statutory open period.

(3) In respect to rulings issued by the department, based on a particular fact situation which may affect the tax liability of the taxpayer, only the taxpayer to whom the ruling was issued is entitled to rely on it. Since the department publicizes summaries of rulings which it makes, other taxpayers with substantially identical factual situations may rely on the publicized rulings for informational purposes in preparing returns and making tax decisions. Generally, department publications may be relied on by any

taxpayer if their fact situation does not vary substantially from those facts upon which the department based its publication. If a taxpayer relies on a publicized ruling and the department discovers, upon examination, that the fact situation of the particular taxpayer is different in any material respect from that situation on which the original ruling was issued, the ruling will afford the taxpayer no protection and the examination will apply to all open years under the statutes. Letters of findings that are issued by the department, as a result of protested assessments, are to be considered rulings of the department as applied to the particular facts protested.

(e) Oral opinions or advice will not be binding upon the department. However, taxpayers may inquire as to whether or not the department will make a ruling or determination based on the facts presented by the taxpayer. If the taxpayer wishes a ruling by the department, the formal request must be in writing. A taxpayer may also orally receive technical assistance from the department in preparation of returns. However this advice is advisory only and is not binding in the latter examination of returns.

Based upon general inquiries and correspondence, the department often issues written letters of advice. Such letters are advisory in nature only and merely technical assistance tools for the taxpayer. Strictly informational type letters are not to be considered rulings by the department and will not be binding.

However, some written inquiries have asked for the tax consequences of a particular transaction, based upon the facts presented. In such instances, the department may consider such letters as rulings that may bind the department to the position stated in respect to that taxpayer only. All such rulings issued will be binding provided that all of the facts described in obtaining the ruling are true and accurate. Any misstatement of material fact or information will void the ruling.

(f) In respect to material published by the department, the general policy is that a taxpayer may rely on these publications with regard to their own business activities, regardless of the fact that the taxpayer may never have read the publications when entering into the transaction. Thus, the taxpayer need not have a specific ruling on the matter. However, the taxpayer must show that his particular fact situation complies with the guidelines of the publication.

(g) Examples are included in department publications and rules for illustrative purposes only. Such examples are often simplified to illustrate a specific point without regard to transactions or situations which would normally be related to the specific point illustrated. Accordingly, items specifically designated as examples, which are included in department rules and publications, are not to be considered as an official part of such rules and publications and cannot be relied upon by a taxpayer as illustrative of any particular situation in its entirety. *(Department of State Revenue, 45 IAC 15-3-2; filed Oct 1, 1987, 1:30 pm: 11 IR 535)*

45 IAC 15-3-3 Forms

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-3-4; IC 6-8.1-6-4

Sec. 3. (a) All returns and information required by the provisions of the listed taxes must be submitted on forms furnished by the department. Reprints and reproductions will be accepted. For purposes of 45 IAC 15-3-3 the word "reprint" represents blank forms to be used for filing purposes with the department. "Reproductions" will denote copies of completed forms to be filed with the department.

(b) Requirements:

(1) All reprints and reproductions must be facsimilies and must be on paper of substantially the same color, weight (not less than 16 lbs), size, and texture, and of a quality as good as that used on the original form.

(2) Reprints must substantially duplicate the color of ink of the official form in order to be accepted. However, reproductions resulting in black printing will be accepted.

(3) Reproductions must have a high standard of legibility, both as to original form and as to the reported information. The department reserves the right to reject any reproductions with poor legibility, to withdraw the benefits of this section from any firm or individual, and to reject any process which fails to meet these standards.

(4) No tolerance will be permitted in the image size of printed material. Any pin feed borders must be stripped off before the form is filed.

(c) Reprints and reproductions of official forms and nonstandard forms which do not meet the requirements mentioned above cannot be filed in lieu of the official forms. They may, however, be filed as supporting statements to provide details and explain entries made on the official form. Although reproduced returns may be filed, they must contain the original signatures. Reproduced signatures will not be accepted. Reprints and reproductions may be printed on one side only. If the reverse side of the original form is required, it must be firmly stapled to page one. Form W-2 and check, if applicable, should be stapled to page one only in the position designated.

(d) Reprints and reproductions of forms and schedules meeting the above conditions may be used without prior approval of the department. However, if specific approval of a reprint or reproduction of any such form or schedule is desired, a sample of the proposed reprint or reproduction should be sent to the department for consideration.

(e) The department encourages the filing of information returns on magnetic media. Procedures and specifications for magnetic media reporting are available from the department.

(f) Any machine readable form (including magnetic ink) must be submitted to the department for prior approval. *(Department of State Revenue; 45 IAC 15-3-3; filed Oct 1, 1987, 1:30 pm: 11 IR 536)*

45 IAC 15-3-4 Representation of taxpayers before the department

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-3-2; IC 6-8.1-3-8; IC 6-8.1-7; IC 6-8.1-8-4

Sec. 4. (a) There are no formal qualifications for individuals who may represent a taxpayer before the department. However, there are certain limitations concerning former department employees (see IC 6-8.1-3-2). Further, any special counsel employed by the department under IC 6-8.1-8-4 may not represent a taxpayer for whom an outstanding tax warrant has been issued by the department. Restrictions concerning the release of confidential information imposed by IC 6-8.1-7 make it mandatory that any person representing a taxpayer, or otherwise appearing or communicating with the department on a taxpayer's behalf, present a properly executed power of attorney prior to the department releasing any tax return information to the representative. No information will be released to a representative of the taxpayer out of the taxpayer's presence, unless a properly executed power of attorney has been presented. Power of attorney forms are available from the department.

Casual conversations with a taxpayer's representative who does not have a power of attorney on file are permitted. However, neither tax return information nor specific information will be disclosed.

(b) The power of attorney must contain the following information:

(1) The name, address, and taxpayer identification number of the taxpayer.

(2) The name, address, and telephone number of the taxpayer's representative or representatives. A corporation, law firm, or accounting firm must name at least one individual as the representative.

(3) The type of tax and the tax years for which the representative has been appointed.

(4) Any restrictions or limitations placed upon the representative when acting on behalf of the taxpayer.

(5) The power of attorney must be signed by the taxpayer or an individual authorized to execute a power of attorney. The department may require that the signature be notarized by a notary public if the representative is not a licensed attorney or certified public accountant.

(c) If the taxpayer executes a power of attorney the department will communicate primarily with the taxpayer's representative. Generally, a copy of any communication with the taxpayer's representative will not be sent to the taxpayer until a final determination is made on the matter pending before the department. *(Department of State Revenue; 45 IAC 15-3-4; filed Oct 1, 1987, 1:30 pm: 11 IR 536)*

45 IAC 15-3-5 Audits; investigations; subpoenas; court orders

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-3-12

Sec. 5. (a) Investigations. The department, or its authorized agents, may examine the books, records, papers, or other data bearing on the correctness of returns, including those pertinent records of third parties handling funds for the credit of, or acting as agent for, any person subject to a listed tax. This includes, but is not limited to, records maintained by banks, savings and loan associations, and credit unions.

(b) Subpoena Power. (1) The department has the power to issue subpoenas compelling the attendance of any person called upon to testify in any matter before the department. The department also has the power to compel the production of books and records.

(2) The department may subpoena records. In general, service may be made upon an individual or an individual acting in a representative capacity by:

(A) sending a copy of the subpoena by registered or certified mail, or other public means by which a written acknowledgment of receipt may be requested and obtained, to the persons *[sic.]* residence, place of business or employment with return receipt

requested and returned showing receipt of the subpoena; or

(B) delivering a copy of the subpoena to the person; or

(C) personally leaving a copy of the subpoena at the person's dwelling house or usual place of abode; or

(D) serving the person's agent as provided by rule, statute or valid agreement.

Whenever service is made under subdivision (C) or (D), the department shall also send by first class mail a copy of the subpoena to the last known address of the person being served and this fact shall be shown upon the return.

(3) Service upon an organization may be made as follows:

(A) in the case of a domestic or foreign organization, upon an executive officer thereof, or if there is an agent appointed or deemed by law to have been appointed to receive service, then upon such agent; or

(B) in the case of a partnership, upon a general partner thereof.

(c) Court Petition. Any failure or refusal to cooperate with the department in reviewing and auditing records and returns, including the answering of questions, will be reported to the attorney general who may institute proceedings against the person or taxpayer who fails or refuses to cooperate. Such proceedings include the filing of a petition setting forth the circumstances and facts of the demand of the department and the refusal or failure to submit the required information.

(d) Court Order. The court, upon receiving such petition, shall issue an order to the named defendant to produce any requested evidence or testimony. Unless the defendant can show good cause for not producing such evidence or giving such testimony, the court shall order the defendant to produce evidence and offer any testimony required. *(Department of State Revenue; 45 IAC 15-3-5; filed Oct 1, 1987, 1:30 pm: 11 IR 537)*

Rule 4. Division of Audit

45 IAC 15-4-1 Powers

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-4-2

Sec. 1. The division of audit may have full and prompt access to all official state and local records and to any information from government and private sources that is useful in performing its functions. *(Department of State Revenue; 45 IAC 15-4-1; filed Oct 1, 1987, 1:30 pm: 11 IR 538)*

Rule 5. Assessment

45 IAC 15-5-1 Notice

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-5-1

Sec. 1. If the department believes that a taxpayer has improperly reported a listed tax liability, the department may at any time within the prescribed statute of limitations period issue to such taxpayer a formal notice that the department proposes to assess additional tax. The formal notice shall be based on the best information available to the department. Any written advisement which informs the taxpayer of the amount of the proposed assessment for a particular tax period shall constitute a formal notice. A formal notice shall be sent through the United States mail. *(Department of State Revenue; 45 IAC 15-5-1; filed Oct 1, 1987, 1:30 pm: 11 IR 538)*

45 IAC 15-5-2 Protests

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-5-1

Sec. 2. (a) A taxpayer has sixty (60) days from the date the notice of additional tax assessment is mailed to protest the additional tax liability.

(b) All protests of additional assessments must be in writing and include the taxpayer's name, tax identification number, address and the basis for objections to the proposed assessment.

(c) If the taxpayer desires a hearing before the department, the protest shall so state. The taxpayer may, in lieu of a hearing,

submit written objections to the assessment. Protests should be submitted to the administrator of the division which initiated the assessment.

(d) The department may correspond with the tax payer prior to the hearing, either in writing or orally, in order to gather information and clarify issues presented in the protest letter. *(Department of State Revenue; 45 IAC 15-5-2; filed Oct 1, l987, 1:30 pm: 11 IR 538)*

45 IAC 15-5-3 Hearings

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-5-1

Sec. 3. (a) A taxpayer receiving a notice of proposed assessment shall have a right to protest the additional assessment and have a hearing of the facts and issues before a final determination is made by the department with respect to such proposed assessment.

(b) The department hearing procedures are as follows:

(1) Upon receipt of a timely protest requesting a hearing with the department, the department's file, including the taxpayer's protest, will be forwarded to the administrator of the initiating tax division or to the technical tax division.

(2) The department shall set a date for a hearing of the protest and the taxpayer will be notified of the time and place thereof.

(3) Once a hearing date has been set, extensions of time, continuances and adjournments may be granted at the discretion of the department upon a showing of good cause.

(4) If the taxpayer or its duly authorized representative (see 45 IAC 15-3-3) wishes to file legal memoranda with the department concerning the facts, issues and arguments of its protest, that material must be submitted at least five (5) days prior to the date of the hearing.

(5) In lieu of a hearing, the taxpayer may elect to have its protest resolved based upon the taxpayer's written brief or by telephone conference. If the taxpayer elects to rely on its written brief or a telephone conference, the taxpayer's right to a hearing shall be waived. In resolving the protest, the department shall consider all relevant information and evidence submitted by the taxpayer and/or available to the department.

(6) If a taxpayer or its representative fails to appear at a hearing without securing a continuance, the department will decide the issues on the best evidence available to the department.

(7) The hearing will be conducted in an informal manner. The purpose of the hearing is to clearly establish the taxpayer's specific objections to the assessment and the reasoning for these objections. The hearing is not governed by any rules of evidence. The department is expressly excluded from the requirements of the Administrative Adjudication Act.

(8) The burden of proving that a proposed assessment is incorrect rests with the taxpayer against whom the proposed assessment is made. The department's audit establishes a prima facie presumption of the validity of the audit and the taxpayer's liability.

(Department of State Revenue; 45 IAC 15-5-3; filed Oct 1, 1987, 1:30 pm: 11 IR 538)

45 IAC 15-5-4 Letter of findings

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-5-1

Sec. 4. (a) The protest will not be resolved at the hearing. All facts and arguments presented will be considered by the department and a decision will be rendered in writing described as a letter of findings.

(b) The letter of findings will arrive at one (1) of two (2) conclusions. The procedures relating to these conclusions are as follows:

(1) Assessment sustained in its entirety:

(A) A letter of findings will be written setting out briefly the issues and the rationale supporting the assessment.

(B) After review, the letter of findings and file will be forwarded to the deputy commissioner or commissioner for approval.

(C) The file and letter of findings will then be returned to the initiating division.

(D) The letter of findings will be mailed with a notice of tax due indicating updated interest. The original notice of tax due will be voided.

(2) Protest sustained partially or in its entirety:

(A) A memorandum will be written, addressed to the initiating division, setting out in sufficient detail the findings of the department with respect to the proposed assessment.

(B) After review, the proposed assessment will be adjusted by a supplemental assessment.

(C) After review by the initiating administrator, a letter of findings will be written setting out the issues and the findings which resulted in the supplemental assessment.

(D) The letter of findings will be forwarded to the deputy commissioner or commissioner for approval.

(E) After signature of the deputy commissioner or commissioner, the file will be returned to the initiating division.

(F) The letter of findings will be mailed to the taxpayer and/or the taxpayer's representative along with a revised notice of tax due consistent with the supplemental assessment. The original notice of tax due will be adjusted or cancelled.

(Department of State Revenue; 45 IAC 15-5-4; filed Oct 1, 1987, 1:30 pm: 11 IR 539)

45 IAC 15-5-5 Rehearings

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-5-1

Sec. 5. (a) After receipt of the letter of findings, the taxpayer may petition for a rehearing. Rehearings will be granted by the commissioner or deputy commissioner only under unusual circumstances. The taxpayer must allege that certain material facts or circumstances were not presented or considered in the original proceedings. Rehearings are granted at the discretion of the commissioner or deputy commissioner.

(b) If a rehearing is granted, the rehearing will not be held de novo unless abuse of discretion is alleged. When such abuse is alleged, the evidence will not be reweighed. Instead, the department will only consider evidence most favorable to the department's position and reverse only if the decision is clearly against the logic and effect of the facts and circumstances. However, if the taxpayer presents new and relevant evidence as a grounds for reversal, the new evidence will be weighed in light of all relevant facts and circumstances. *(Department of State Revenue; 45 IAC 15-5-5; filed Oct 1, 1987, 1:30 pm: 11 IR 539)*

45 IAC 15-5-6 Demand for payment

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-5-1

Sec. 6. If a taxpayer fails to properly respond within sixty (60) days to a formal notice as defined in 45 IAC 15-5-1 or fails to appear at a hearing or if the department determines that the taxpayer owes additional taxes after the protest and hearing, the department must serve notice and demand payment from the taxpayer, plus any penalty or accrued interest. *(Department of State Revenue; 45 IAC 15-5-6; filed Oct 1, 1987, 1:30 pm: 11 IR 539)*

45 IAC 15-5-7 Statute of limitations on issuance of proposed assessment

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-1-4; IC 6-8.1-5-2; IC 6-8.1-6-3

Sec. 7. (a) Except as otherwise provided in IC 6-8.1-5-2, the statute of limitations for the assessment of a listed tax liability is three (3) years from the due date of the annual return (including extensions of time granted by the department) or the date on which the annual return is filed for the tax year, whichever is later. If an extension of time is granted by the department, the statute of limitations shall begin to run on the day after the last day of the extension period.

(b) In the case where returns are filed monthly, quarterly, or semi-annually such as returns 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, the statute of limitations for an assessment is three years from the date the return was filed, or the end of the calendar year which contains the taxable period for which the return was filed, whichever is later.

(c) “Date of filing” is defined in IC 6-8.1-6-3. The due date of any listed tax is defined in IC 6-8.1-1-4.

(d) If a taxpayer files an amended return which corrects, updates or in any way changes the amount and/or method of reporting, the statute of limitations for assessment will be three (3) years from the date on which the amended return is filed. However, once the statute of limitations for the original return (the return being amended) has run, the amount the department may

assess due to the amended return is limited to any amount claimed as a refund on the amended return.

EXAMPLE

Corporation Y files its 19X2 Indiana return on April 15, 19X3. However, Corporation Y does not pay the tax due until May 1, 19X3. On April 30, 19X6, Corporation Y files an amended return for 19X2 claiming a refund for certain sales in interstate commerce for gross income tax purposes. The three (3) year statute of limitations for the original 19X2 return ended on April 15, 19X6. However, the amended return extends the assessment period until April 30, 19X9. Any assessment levied after April 15, 19X6 will be limited to the amount resulting in a refund.

(e) If a taxpayer files an adjusted gross income tax, supplemental net income tax, or county adjusted gross income tax return that understates its income by at least twenty-five percent (25%), the statute of limitations for proposed assessments is increased from three (3) years to six (6) years. "Income," as used in 45 IAC 15-5-7(e), shall be defined to mean adjusted gross income for the adjusted gross income tax, supplemental net income for the supplemental net income tax and county adjusted gross income for the county adjusted gross income tax.

(f) The running of the statute of limitations for purposes of assessing unpaid taxes will not start if the taxpayer fails to file a return which is required by any listed tax provision. Also, a substantially blank, unsigned or fraudulent return will not start the running of the statute of limitations.

(1) A substantially blank return is one which does not furnish all the information necessary to determine a taxpayer's liability for the tax in question. In order for a return to be complete enough to determine the taxpayer's liability, the information does not have to be correct. Any denotion by the taxpayer which clearly indicates a positive denial of liability for any tax listed on the tax form shall constitute a completed return. Thus, a return which has "zero," or "-0-" or "none" written on a given line is not substantially blank. Also, if a taxpayer makes a positive indication of liability on a line which constitutes a total of one or more taxes, a return is deemed to be completed for all such taxes even if the particular line for the tax(es) is left blank.

(2) An unsigned return is one which does not have the original hand written signature of the individual taxpayer or corporate officer or their authorized designee. The return also must be dated.

(3) A person who files a return which makes a false representation(s) with knowledge or reckless ignorance of the falsity will be deemed to have filed a fraudulent return. There are five elements to fraud.

(A) Misrepresentation of a material fact: A person must truthfully and correctly report all information required by the Indiana Code and the department's regulations. Any failure to correctly report such information is a misrepresentation of a material fact. Failure to file a return may be a misrepresentation.

(B) Scienter: This is a legal term meaning guilty knowledge or previous knowledge of a state of facts, such as evasion of tax, which it was a person's duty to guard against. A person must have actual knowledge of the responsibility of reporting the information under contention. However, the reckless making of statements without regard to their truth or falsity may serve as an imputation of scienter for purpose of proving fraud.

(C) Deception: Deception operates on the mind of the victim of the fraud. If a person's actions or failure to act causes the department to believe a given set of facts which are not true, the person has deceived the department.

(D) Reliance: Reliance also concerns the state of mind of the victim and is generally considered along with deception. If the person's actions, failure to act, or misrepresentations cause the department to rely on these acts to the detriment or injury of the department, the reliance requirement of fraud will be met.

(E) Injury: The fraud instituted upon the department must cause an injury. This can be satisfied simply by the fact that the misrepresentation(s) caused the department not to have collected the money which properly belongs to the state of Indiana.

In order to demonstrate fraud, the department is required to prove all of the above elements are present. This must be shown by clear and convincing evidence. *(Department of State Revenue; 45 IAC 15-5-7; filed Oct 1, 1987, 1:30 pm: 11 IR 539)*

45 IAC 15-5-8 Jeopardy assessments

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-5-3

Sec. 8. (a) The department may declare the taxable period of a taxpayer terminated and demand immediate payment of the tax due under any one of the following circumstances:

(1) the department finds that the taxpayer intends to remove itself from the state or intends to remove its property from the

state; or

(2) the department finds that the taxpayer is concealing its location or its property; or

(3) the taxpayer does any other act tending to prejudice or render wholly or partly ineffective proceedings to compute, assess, or collect any tax levied by the state.

(b) The assessment for taxes owing shall be made to on the best information available to the department. No notice for payment is required for an assessment under IC 6-8.1-5-3. Instead, payment shall be due immediately upon assessment by the department.

(c) If the taxpayer believes that it does not owe some or all of the amount assessed by the department under IC 6-8.1-5-3, it may protest within twenty (20) days after the assessment is made. The taxpayer may request a hearing, whereupon the department may hold a hearing in conformity with the provisions of 45 IAC 15-5-3.

(d) If payment of the amount assessed by the department is not made immediately, the department may issue a jeopardy tax warrant against the taxpayer. The taxpayer's request for a hearing will not stay the issuance of the jeopardy tax warrant. Only the full payment of the assessment will prevent the issuance of the jeopardy tax warrant.

(e) The department has full power to issue, serve, levy and collect a jeopardy tax warrant. The department may, at its discretion, request the assistance of the state police department or the sheriff of any county in effectuating the jeopardy tax warrant.

(f) The department may, at its discretion, accept a surety bond for the full amount of the jeopardy tax warrant in lieu of the levy and sale of the taxpayer's property. *(Department of State Revenue; 45 IAC 15-5-8; filed Oct 1, 1987, 1:30 pm: 11 IR 541)*

Rule 6. Filing and Due Dates

45 IAC 15-6-1 Extensions

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-5-2; IC 6-8.1-6-1

Sec. 1. (a) The department shall grant a taxpayer an extension for filing a tax return if:

(1) the taxpayer petitions the department before the original tax due date or obtains an automatic extension pursuant to IC 6-8.1-5-2(e); and

(2) the taxpayer includes a payment of at least ninety percent (90%) of the tax reasonably expected to be due on the due date or at least one hundred percent (100%) of the immediate prior year total tax liability.

(b) For subdivision (2) above, the amount of tax "reasonably expected" to be due is defined as ninety percent (90%) of the ultimate tax due. Thus, the department shall determine if the taxpayer's payment was reasonable by using the final amount of tax owed for the tax year.

(c) An extension to file a tax return is in no manner to be construed as an extension for the due date of payment of a taxpayer's liability for a tax year.

(d) A proper extension to file a tax return will only have the effect of foregoing the penalties imposed for failure to pay a listed tax. The taxpayer will still be liable for the statutory interest for any tax that remains unpaid during an extension period. *(Department of State Revenue; 45 IAC 15-6-1; filed Oct 1, 1987, 1:30 pm: 11 IR 541)*

45 IAC 15-6-2 Holidays

Authority: IC 6-8.1-3-3
Affected: IC 1-1-9-1; IC 6

Sec. 2. Any act which is required to be performed under the provisions of IC 6 of the Indiana Code pertaining to any listed tax may be performed on the succeeding business day if the due date falls on any state holiday listed in IC 1-1-9-1, any other national legal holiday, or a Saturday or Sunday. *(Department of State Revenue; 45 IAC 15-6-2; filed Oct 1, 1987, 1:30 pm: 11 IR 541)*

45 IAC 15-6-3 Date of filing

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-6-3

Sec. 3. (a) If a document which is required to be filed with the department by a prescribed date is mailed through the United

States mail, the date displayed on the post office cancellation mark establishes an irrebuttable presumption that the displayed date was the date on which the document was filed. If a document is delivered to the department in any other manner than the United States mail, the department shall stamp the document in such a fashion as to display the date the document is received. This date stamped by the department shall establish an irrebuttable presumption as to the date the document is received.

(b) If a document is sent through the United States mail by registered mail, certified mail or certificate of mailing, then such date of registration, certification or certificate shall be conclusive as to the date of filing. Such date as authenticated by the United States post office records shall be conclusive even in the case of a conflicting postmark date.

(c) If a document mailed through the United States mail is physically received after the due date without a legibly correct postmark, the person who mailed the document may show the document was mailed on or before the due date by reasonable evidence. Examples of such evidence include, but are not limited to, the following:

(1) Testimony of the party.

(2) Testimony of disinterested third parties.

(3) Evidence and/or testimony from the United States post office.

(4) Any other evidence which tends to establish the date of filing.

(d) If a document is mailed to, but never received by the department, the person sending the document may produce reasonable evidence to show that the document was mailed on or before the due date. Such evidence as used to show the correct postmark date in 45 IAC 14-6-3(c) *[subsection (c)]* may also be used to establish the mailing of a document. In addition to showing that the document was deposited in the United States mail on or before the due date, the person must file a duplicate document with the department within thirty (30) days from the date the department sends the person notice that the prescribed documents were not received. *(Department of State Revenue; 45 IAC 15-6-3; filed Oct 1, 1987, 1:30 pm: 11 IR 541)*

Rule 7. Confidentiality

45 IAC 15-7-1 Disclosure of information

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-8-4; IC 6-8.1-7-1

Sec. 1. (a) Before a judicial order will be considered sufficient for the department to disclose information, the order must be an official court document signed by a presiding judge.

(b) Employees of the department may reveal and discuss information included on a tax return with:

(1) The taxpayer, when identification has been produced to insure the fact that the individual is the taxpayer who filed the return.

(2) The taxpayer's representative who provides a properly executed power of attorney from the taxpayer. See 45 IAC 15-3-3.

(3) Another department employee when the information is being discussed for tax compliance or collection purposes.

(4) The public concerning the disclosure of certain information submitted by not-for-profit organizations as allowed under IC 6-2.1-8-4.

(Department of State Revenue; 45 IAC 15-7-1; filed Oct 1, 1987, 1:30 pm: 11 IR 542)

45 IAC 15-7-2 Individual filing returns; disclosure of information

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-7-2

Sec. 2. At a person's request, the department may disclose whether or not an individual filed an Indiana income tax return. Such disclosure may not be made with respect to any taxable year until the close of the calendar year following the year in which the return should have been filed. No other information derived from or concerning the individual's return may be disclosed.

EXAMPLE

Disclosure of information that a taxpayer filed a 19X1 individual income tax return could not be revealed until January, 19X4. Such information cannot be made until the close of the calendar year following the year in which the return should have been filed.

(Department of State Revenue; 45 IAC 15-7-2; filed Oct 1, 1987, 1:30 pm: 11 IR 542)

Rule 8. Collection

45 IAC 15-8-1 Partial payments

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-8-1.5; IC 6-8.1-8-2

Sec. 1. (a) If a taxpayer makes a partial payment of the taxpayer's tax liability, the payment shall only be applied first against the penalty, second the interest and third the principal liability of the particular billing for a given year and tax.

EXAMPLE

A taxpayer has outstanding tax liabilities for both income and sales tax for years 19X1, 19X2 and 19X3. If the taxpayer makes a partial payment for the outstanding income tax liability, the payment will first be applied to the penalty, interest and principal liability for income tax in 19X1. If any payment remains, it will be applied in the prescribed order for 19X2 and 19X3.

(Department of State Revenue; 45 IAC 15-8-1; filed Oct 1, 1987, 1:30 pm: 11 IR 542)

45 IAC 15-8-2 Demand notices; tax warrants

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-8-1.5; IC 6-8.1-8-2

Sec. 2. Any money received by the department pursuant to a demand notice or tax warrant shall be applied to the outstanding tax liability of the taxpayer in the manner provided by IC 6-8.1-8-1.5. In this case, the tax liability of the taxpayer shall include any collection fee, sheriff's costs, clerk's costs, and damages. *(Department of State Revenue; 45 IAC 15-8-2; filed Oct 1, 1987, 1:30 pm: 11 IR 542)*

Rule 9. Refunds

45 IAC 15-9-1 Due date; net operating loss

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-8.1-5-2; IC 6-8.1-9-1

Sec. 1. (a) In determining the time limitations within which a person may file a claim for refund, the due date of the return shall include extensions of the due date as provided under IC 6-8.1-5-2.

(b) When claiming a refund arising from a net operating loss, the three (3) year limitation shall be determined by the year in which the net operating loss is incurred, not the year to which the loss is carried back.

EXAMPLE

A taxpayer has a $50,000 net operating loss in 19X4. The loss is carried back to 19X1, 19X2 and 19X3. The three (3) year limitations will begin to run on the latter of the due date of the 19X4 return or the date the return for 19X4 is filed.

(Department of State Revenue; 45 IAC 15-9-1; filed Oct 1, 1987, 1:30 pm: 11 IR 543)

45 IAC 15-9-2 Statute of limitations for refunds

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-5-2; IC 6-8.1-9-1

Sec. 2. (a) If the department finds that a taxpayer has paid more tax than is legally due for a taxable period, the department shall apply the excess against any amount of that same tax that is assessed and is currently due. Any assessment by the department which has not been protested within sixty (60) days of the notice of proposed assessment shall be considered currently due.

(b) The department has no legal method of generating a claim for refund. A claim for refund can only be initiated pursuant to IC 6-8.1-9-1.

EXAMPLE

A taxpayer is audited by the department for the tax period 19X3. This audit results in an overpayment of tax. The department has no legal authority to automaticaly *[sic.]* refund or credit this overpayment to the taxpayer. Instead, the taxpayer must file a claim for refund as prescribed in IC 6-8.1-9-1 and 45 IAC 15-9-1.

(c) If a taxpayer claims a refund for a period which is closed to issuance of a proposed assessment as defined in IC 6-8.1-5-2, the department may still examine the period in order to determine that the reasons set forth by the taxpayer for the refund are valid. The department may adjust the period to the extent necessary to make the issues raised by the refund conform to the applicable law.

EXAMPLE

A taxpayer claims a refund arising from alleged exempt sales in interstate commerce under the gross income tax. The tax period, 19X1, is open to a refund claim under IC 6-8.1-9-1 but is closed to assessment under IC 6-8.1-5-2. The department may still examine the 19X1 tax period in order to determine whether the interstate sales are exempt and were properly reported.

EXAMPLE

A taxpayer claims a refund arising from a net operating loss carryback. The carryback years are open to refund but not to assessment. The department may still examine the closed years to determine whether the net operating loss is valid and was properly calculated. This examination includes any adjustments to properly reflect the Indiana adjusted gross income for the carryback year.

(d) When filing a claim for refund with the department the taxpayer's claim shall set forth:

(1) the amount of refund claimed;

(2) a sufficiently detailed explanation of the basis of the claim such that the department may determine its correctness;

(3) the tax period for which the overpayment is claimed; and

(4) the year and date the overpayment was made.

The claim for refund shall be filed on a form prescribed by the department. *(Department of State Revenue; 45 IAC 15-9-2; filed Oct 1, 1987, 1:30 pm: 11 IR 543)*

Rule 10. Set Off of Refunds

45 IAC 15-10-1 Joint returns

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-9.5-5; IC 6-8.1-9.5-11

Sec. 1. For purposes of IC 6-8.1-9.5-11, a co-refundee who is not a debtor must file with the department its defense to a proposed set off within thirty (30) days of the written notice provided in IC 6-8.1-9.5-5. A "defense" shall constitute any reasonable evidence which establishes that the co-refundee is not a debtor to the claimant agency. *(Department of State Revenue; 45 IAC 15-10-1; filed Oct 1, 1987, 1:30 pm: 11 IR 543)*

Rule 11. Penalties and Interest

45 IAC 15-11-1 Liability for interest

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-10-1

Sec. 1. For purposes of this section, see 45 IAC 15-5-7(f)(1) and (2) for definitions of a "substantially blank return" and an "unsigned return." *(Department of State Revenue; 45 IAC 15-11-1; filed Oct 1, 1987, 1:30 pm: 11 IR 544)*

45 IAC 15-11-2 Liability for penalty

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-10-1; IC 6-8.1-10-2

Sec. 2. (a) For purposes of this section, see 45 IAC 15-5-7(f)(1) and (2) for definitions of a "substantially blank return" and an "unsigned return."

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated

as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

(1) the nature of the tax involved;

(2) judicial precedents set by Indiana courts;

(3) judicial precedents established in jurisdictions outside Indiana;

(4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;

(5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case. *(Department of State Revenue; 45 IAC 15-11-2; filed Oct 1 1987, 1:30 pm: 11 IR 544)*

45 IAC 15-11-3 Preparation of return by the department

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-10-3

Sec. 3. If a person fails to file a required return within thirty (30) days of the notice sent by the department, the department may prepare a return for the taxpayer. For this purpose, a "return" prepared by the department shall consist of an actual prescribed return, an audit report or a notice of tax due. *(Department of State Revenue; 45 IAC 15-11-3; filed Oct 1, 1987, 1:30 pm: 11 IR 544)*

45 IAC 15-11-4 Fraudulent intent to evade tax

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-10-4

Sec. 4. The penalty for failure to file a return or to make full payment with that return with the fraudulent intent of evading the tax is one hundred percent (100%) of the tax owing. Fraudulent intent encompasses the making of a misrepresentation of a material fact (See 45 IAC 15-5-7(f)(3)) which is known (See 45 IAC 15-5-7(f)(3)(B)) to be false, or believed not to be true, in order to evade taxes. Negligence, whether slight or great, is not equivalent to the intent required. An act is fraudulent if it is an actual, intentional wrongdoing, and the intent required is the specific purpose of evading tax believed to be owing. *(Department of State Revenue; 45 IAC 15-11-4; filed Oct 1, 1987, 1:30 pm: 11 IR 544)*

45 IAC 15-11-5 Bad checks; penalty

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-10-5

Sec. 5. For purposes of IC 6-8.1-10-5, reasonable cause for waiving the penalty shall constitute circumstances which were totally beyond the control of the taxpayer. Determination of reasonable cause is at the discretion of the department. *(Department of State Revenue; 45 IAC 15-11-5; filed Oct 1, 1987, 1:30 pm: 11 IR 544)*

45 IAC 15-11-6 Information return

Authority: IC 6-8.1-3-3
Affected: IC 6-8.1-10-6

Sec. 6. For purposes of IC 6-8.1-10-6, an "information return" shall constitute any return required by the Indiana Code, or department regulations to be filed by a taxpayer which does not report a tax liability. Such returns include, but are not limited to:

(1) An S corporation return.

(2) A partnership return.

(3) A W-2 return.

(4) A WH-18 return.

(5) Certain fiduciary returns.
(6) Not-for-profit returns.
(Department of State Revenue; 45 IAC 15-11-6; filed Oct 1, 1987, 1:30 pm: 11 IR 544)

ARTICLE 16. MOTOR CARRIERS

NOTE: 45 IAC 16 was transferred from 170 IAC 2. Wherever in any promulgated text there appears a reference to 170 IAC 2, substitute 45 IAC 16.
NOTE: IC 8-2.1-18 was repealed by P.L.110-1995, SECTION 35, effective May 10, 1995.

Rule 1. Motor Carrier Department

45 IAC 16-1-1 Definitions

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 1. DEFINITIONS. When used in these Rules, unless the context otherwise requires:
(a) Act shall mean the Motor Carrier Act of 1935, as amended.
(b) Commission shall mean the Public Service Commission of Indiana.
(c) Director shall mean the Director of the Motor Carrier Division of the Public Service Commission of Indiana.
(d) Division shall mean the Motor Carrier Division of the Public Service Commission of Indiana.
(Department of State Revenue; No. 32257: Motor Carrier Department Rule 1; filed Jul 22, 1970, 9:15 am: Rules and Regs. 1971, p. 247) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-1-1) to the Department of State Revenue (45 IAC 16-1-1) by P.L.72-1988, SECTION 12, effective July 1, 1988.

45 IAC 16-1-2 Insurance coverage

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 2. (a) General Filing Requirements. Every common and contract carrier of passengers and/or property for hire by motor vehicle over the highways of the state of Indiana, in intrastate and/or interstate commerce shall, subject to the approval of the commission, file with and keep in effect and on file Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance (commonly known as Form E Indiana) covering public liability, property damage, loss to cargo subject to the exceptions and minimum amounts hereinafter set out.

(b) Public Liability and Property Damage Coverage. The minimum amounts for public liability and property damage coverage shall be those contained in Title 49, Code of Federal Regulations, Part 387.

(c) Coverage for Loss or Damage to Cargo. The minimum amounts of coverage for loss or damage to cargo shall be those contained in Title 49, Code of Federal Regulations, Part 1043.

(d) Self-Insurers.

(1) Qualifications; Discretion of Commission. The commission may, in its discretion, allow common carriers to qualify as self-insurers, if such carriers furnish true and accurate verified statements of their financial condition and other evidence which will establish to the satisfaction of the commission the ability of such carriers to satisfy their obligations for public liability, property damage and loss or damage to cargo in not less than the respective minimum amounts set out in subsections (b) and (c) of this section without affecting the stability or permanency of the business of such carriers.

(2) Carriers Engaged Only in Interstate Commerce. A carrier engaged only in interstate commerce within the borders of the state of Indiana, who has been qualified as a self-insurer under the rules and regulations of the Interstate Commerce Commission shall, in lieu of the verified statement of financial condition required above, submit to this commission a certified copy of the currently effective Interstate Commerce Commission order authorizing such motor carrier to self-insure under the provisions of the Interstate Commerce Act.

(3) Annual Proof Required. Each motor carrier shall, on or before January 31 of each year, and prior to the purchase of P.S.C.I. identification stamps, file with the commission, evidence of its financial condition sufficient to establish continuing compliance with this rule. Failure to do so shall result in the immediate suspension of said carrier's authority, with revocation

thereof to occur upon failure to comply within thirty (30) days of the date of the suspension order.

(e) Forms. Endorsements for certificates of insurance, bonds, indemnity undertakings, other surety agreements and applications to qualify as a self-insurer shall be on such forms as from time to time may be prescribed and approved by the commission.

(f) Issuance in Name of Certificate or Permit Holder. Certificates of insurance, bonds, indemnity undertakings and all other securities and agreements shall be issued in the full and correct name of the individual, firm or corporation to the P.S.C.I. certificate, permit or license has been or is to be issued; in case of partnerships, all partners must be named.

(g) Cancellation. Agreements filed in compliance with 170 IAC 2-1 and the laws of the state of Indiana shall contain an endorsement that the same will not be cancelled or withdrawn until after the commission has been given thirty (30) days' notice in writing at its office in Indianapolis, Indiana, which thirty (30) day period shall commence to run from the date such notice actually is received by the commission.

(1) Forms. Cancellation shall be on such forms as from time to time may be prescribed and approved by the commission.

(2) Automatic Revocation of Prior Certification. Any certification of insurance coverage filed in compliance with this rule shall automatically revoke or terminate any such insurance certification previously made on behalf of the motor carrier and compliance with this rule shall be based solely on the last insurance certification filed on behalf of such carrier.

(3) Filings on an Until-Cancelled Basis. All filings pursuant to this rule shall be on an "until-cancelled" basis.

(h) Suspension and Revocation for Failure to Keep Insurance on File. Upon the failure or refusal of any motor carrier to keep surety bonds, certificates of insurance, indemnity undertakings or other securities or agreements on file with the commission as provided for in subsections (b) to (e) of this section, inclusive, the carrier's certificate or permit and all operations thereunder shall be suspended for a period of thirty (30) days by order of the commission. During said suspension period the certificates of insurance, indemnity undertakings or other securities or agreements shall be filed with and be subject to the approval of the commission, which filing and approval by the commission automatically shall act as a termination of the suspension and reinstatement of the certificate or permit of the carrier. If said filing and approval are not made during said thirty (30) day suspension period, then at the end of said period the certificate or permit of the carrier shall be permanently cancelled and revoked without further order of the commission, shall not be subject to reinstatement and appropriate entry shall be made on the records of the commission.

(i) Notification of Change of Address. Ten (10) days after a change of address a carrier shall notify the director of such change in writing on such form as from time to time may be adopted by the commission for such purpose. Failure to comply with the requirements set out in this paragraph may be grounds for suspension or revocation of the carrier's authority by the commission. *(Department of State Revenue; No. 32257: Motor Carrier Department Rule 2; filed Jul 22, 1970, 9:15 am: Rules and Regs. 1971, p. 247; No. 33612: filed Aug 5, 1974, 2:30 pm: Rules and Regs. 1975, p. 528; filed Nov 20, 1986, 1:24 pm: 10 IR 862) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-1-2) to the Department of State Revenue (45 IAC 16-1-2) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-1-3 Intrastate temporary or emergency temporary authority; application; issuance or denial

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 3. INTRASTATE TEMPORARY OR EMERGENCY TEMPORARY AUTHORITY. (a) Application for Temporary Authority.

(1) Granted Ex Parte–Time Limitation. To enable a carrier to render service for which there is an immediate need to a point or points within a territory having no adequate carrier service capable of meeting such need the Commission may, in its discretion and without hearing, grant temporary authority for such service by a common or contract carrier by motor vehicle, which authority, unless suspended or revoked for good cause, shall be valid for such time as the Commission shall specify, not exceeding 180 days, unless extended by further order of the Commission.

(2) Forms–Procedure. All applications for temporary authority shall be on such forms as from time to time may be prescribed and approved by the Commission. All such applications shall be subject to the procedure hereinafter set out.

(3) Immediate Necessity–Filing Coextensive Permanent Application. Temporary authority shall be granted only upon proof to the satisfaction of the Commission that the necessity for immediate service is such that it must be rendered before sufficient time for a determination on the merits of an application for permanent authority. No application for temporary authority shall be accepted unless there is filed therewith a coextensive application for permanent authority. The granting of an application for temporary authority shall create no presumption that corresponding permanent authority will be granted thereafter.

Applications for temporary authority must be accompanied by the necessary forms evidencing compliance with the insurance and tariff filing requirements of this Commission as set out in Subparagraph (a) (5) of this Rule *[this section]*.

(4) Contents of Affidavits Supporting Immediate Necessity. Applications for temporary authority must be verified and accompanied by affidavits sufficient to prove to the satisfaction of the Commission the immediate necessity for transportation services. Such affidavits must include at least the following information:

(A) Name, address and business of the affiant and his interest in supporting the temporary application;

(B) Description of the specific points or territory in which transportation is required;

(C) Description of the specific commodity or commodities to be transported;

(D) Volume of anticipated traffic, frequency of movement and how transportation has been accomplished in the past year;

(E) How soon the service must be provided, the reasons for the time limit and the anticipated duration of the transportation necessity;

(F) Recital of the consequences if the authority requested is not granted;

(G) The circumstances which created the immediate need for the authority requested; and

(H) Recital of the efforts made to obtain services of existing certificated carriers.

(5) Compliance with Tariff and Insurance Filing Requirements Prior to Action Upon Temporary Authority. The Commission shall not consider or act upon any application for temporary authority unless and until the applicant has complied with the applicable provisions of the Act and the Rules and Regulations of the Commission governing the filing of proposed tariffs, schedules and contracts, the filing of acceptable insurance certification and, if a nonresident applicant, the designation of a resident agent for the service of process. Failure of the applicant to effect compliance with the aforesaid filing requirements at the time of the filing of its application for temporary authority shall result in the rejection of such application for filing with the Commission.

(b) Issuance or Denial of Temporary Authority.

(1) Entry of Application on Division Minutes. Upon receipt of an application for temporary authority in full compliance with the requirements set out in Paragraph (a) of this Rule *[this section]*, the Commission shall give notice of the filing of said application by making an entry on the next regular minutes of the Division, which entry shall include the name and address of the applicant carrier, the authority sought, the docket number assigned, the names of shippers who have submitted affidavits in support thereof and such additional information as the Commission from time to time in its discretion may determine to be relevant.

(2) Protest of Application–Contents. Any interested person who can and will provide all or any part of the transportation service for which authority is sought in the temporary application may file a protest against the temporary application. Such protest must be verified and must designate specifically:

(A) What service the protestant can render;

(B) The method in which the service will be rendered;

(C) Under what authority from this Commission such service is authorized; and

(D) The specific efforts, if any, made by the protestant to solicit the transportation.

(3) Filing of Protest–Service. Such protest must be filed within fifteen (15) calendar days of the date notice of the filing of the temporary application is given as herein provided and must consist of a signed and verified original and four (4) copies. One copy of such protest must be served on the applicant or its authorized representative, if any, by first class United States mail, or in person.

(4) Grant or Denial by Commission. After the expiration of such fifteen (15) day period, the Commission in its discretion may grant or deny the temporary application, giving such weight to affidavits submitted in support of said temporary application and protests filed in opposition to said temporary application as said Commission deems proper.

(5) Issuance of Certified Copy of Order. Upon compliance by the applicant with all the provisions set out in Paragraph (a) and (b) of this Rule *[this section]*, the Commission shall, provided it in its discretion determines to grant the application for temporary authority, issue to the applicant a certified copy of the order granting such authority, which order shall constitute authorization to the applicant to institute temporary service pursuant thereto.

(c) Application for Emergency Temporary Authority.

(1) General Requirements–Time Limitations; Forms. To enable a carrier to render service to meet an immediate and urgent need for service due to emergencies, in which time or circumstances reasonably do not permit the filing and processing of an application for temporary authority as provided by Paragraphs (a) and (b) of this Rule *[this section]*, the Commission, in its discretion and without notice or hearing, may grant emergency temporary authority for such service by a common or contract carrier by motor vehicle, which authority, unless suspended or revoked for good cause, shall be valid for such time as the Commission shall specify, not exceeding thirty (30) days, unless extended by further order of the Commission. All applications for emergency

temporary authority shall be on such forms as from time to time may be prescribed and approved by the Commission.

(2) Proof of Necessity–Coextensive Filing of Temporary and Permanent Applications. Emergency temporary authority shall be granted only upon proof to the satisfaction of the Commission that the necessity for emergency service is such that time or circumstances do not permit the determination of the merits of an application for temporary authority. No application for emergency temporary authority shall be accepted unless there are filed therewith coextensive applications for temporary and permanent authority, except in those circumstances where the emergency temporary authority application definitely states that the transportation necessity will exist only for a period of less than thirty (30) days. The granting of an application for emergency temporary authority shall create no presumption that corresponding temporary or permanent authority will be granted thereafter.

(3) Affidavits of Necessity to Accompany Application–Contents. Applications for emergency temporary authority must be verified and accompanied by affidavits sufficient to prove to the satisfaction of the Commission the emergency necessity for transportation services. Such affidavits must include at least the information required in Subparagraph (a)(4) of this Rule *[this section]* for affidavits in support of applications for temporary authority and, in addition thereto, an exact detailed statement of the circumstances of the emergency transportation necessity for which the applicant seeks authority.

(4) Compliance with Tariff and Insurance Filing Requirements Prior to Action upon Emergency Temporary Authority. The Commission shall not consider or act upon any application for emergency temporary authority unless and until the applicant has complied with the applicable provisions of the Act and the Rules and Regulations of the Commission governing the filing of proposed tariffs, schedules and contracts, the filing of acceptable insurance certification and, if a nonresident applicant, the designation of a resident agent for the service of process. Failure of the applicant to effect compliance with the aforesaid filing requirements at the time of the filing of its application for emergency temporary authority shall result in the rejection of such application for filing with the Commission.

(d) Issuance or Denial of Emergency Temporary Authority.

(1) Discretion of Commission. Upon receipt of an application for emergency temporary authority in full compliance with the requirements set out in Paragraph (c) of this Rule *[this section]*, the Commission, in its discretion and without notice or hearing, may grant or deny said authority.

(2) Issuance of Certified Copy of Order. Upon compliance by the applicant with all the provisions set out in Paragraphs (c) and (d) of this Rule, the Commission shall, provided it in its discretion determines to grant the application for emergency temporary authority, issue to the applicant a certified copy of the order granting such authority, which order shall constitute authorization to the carrier to institute emergency temporary service pursuant thereto.

(e) Supporting Affidavits Unnecessary When Sale and Transfer Involved. The affidavits of supporting shippers required in Subparagraph (a)(4) and (c)(3) of this Rule *[this section]* shall not be required where the emergency temporary authority and/or the temporary authority sought is the same as that contained in a pending sale and transfer proceeding before this Commission. However, such applications for emergency temporary authority and/or temporary authority shall be accompanied by a verified affidavit of the applicant seller stating that the authority which is the basis of said temporary and/or emergency temporary authority has been continuously operated to date of said application. *(Department of State Revenue; No. 32257: Motor Carrier Department Rule 3; filed Jul 22, 1970, 9:15 am: Rules and Regs. 1971, p. 250; No. 33233: filed Jun 12, 1973, 9:30 am: Rules and Regs. 1974, p. 543) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-1-3) to the Department of State Revenue (45 IAC 16-1-3) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-1-4 Intrastate permanent authority application without coextensive application for temporary or emergency temporary authority; sale and transfer application

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 4. REQUIREMENTS FOR APPLICATIONS FOR INTRASTATE PERMANENT AUTHORITY OR APPROVAL OF SALE AND TRANSFER FILED WITHOUT COEXTENSIVE APPLICATIONS FOR TEMPORARY OR EMERGENCY TEMPORARY AUTHORITY. (a) Certificate of Supporting Shipper to Accompany Application for Contract Authority. In those instances where an application for permanent intrastate contract authority is filed with the Commission without a coextensive application for temporary or emergency temporary authority being filed therewith pursuant to Rule 3, such application shall be accompanied by a certificate from each supporting shipper, in which the certificating party shall state that he or the corporation, association or partnership which he represents will:

(1) Support the application;

(2) Attend the hearing on the application and testify on the applicant's behalf; and

(3) In the event the authority requested is granted, enter into a contract with the applicant to utilize the authority granted. This certificate shall be on such form as from time to time may be prescribed by the Commission. Failure to comply with this Paragraph shall result in the application being rejected as to every supporting contract shipper whose certificate is not filed coextensive with the application.

(b) Compliance with Insurance and Tariff Filing Requirements Prerequisite to Consideration of Application. In those instances where an application for permanent intrastate common or contract authority is filed with the Commission without a coextensive application for temporary or emergency temporary authority being filed therewith, the Commission shall neither consider nor act upon such application in any way unless within sixty (60) days after the final order of the Commission has been approved the applicant has fully complied with the applicable provisions of the Act and the Rules and Regulations of the Commission promulgated thereunder governing the filing of tariffs, schedules and contracts, the filing of acceptable insurance certification in compliance with Rule 2 and, if a nonresident applicant, the designation of a resident agent for the service of process. If full compliance is not achieved within the aforesaid sixty-day period, such order shall be revoked automatically and shall not be subject to reinstatement but must be refiled and treated as a new application.

(c) Applicability to Sale and Transfer Application. The requirements of Paragraph (b) of this Rule *[this section]* shall be applicable to all applications for the approval of sale and transfer of intrastate authority. *(Department of State Revenue; No. 32257: Motor Carrier Department Rule 4; filed Jul 22, 1970, 9:15 am: Rules and Regs. 1971, p. 254; No. 35095: filed Dec 29, 1977: Rules and Regs. 1978, p. 703) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-1-4) to the Department of State Revenue (45 IAC 16-1-4) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-1-5 Intrastate transportation of passengers; baggage, newspapers, express or mail included in authority; special or charter services as incidental right (Repealed)

Sec. 5. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 16-1-6 Registration of interstate commerce commission operating authority; application requirements; exemptions

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 6. REGISTRATION OF INTERSTATE COMMERCE COMMISSION OPERATING AUTHORITY WITH THE COMMISSION. (a) Forms. Application for the registration of Interstate Commerce Commission operating authority shall be on such forms as from time to time may be prescribed and approved by this Commission.

(b) Filing Requirements–Insurance; Resident Agent Designation. Each application therefor shall be filed in triplicate and each copy shall be accompanied by a true copy of the certificate or permit issued by the Interstate Commerce Commission sought to be registered. Each application must be accompanied by the necessary forms evidencing compliance with the insurance filing requirements of this commission as set out in Rule 2, unless such certification previously has been submitted. If insurance certification is not submitted with the application for registration of authority, such application shall be rejected. If the applicant is a nonresident of the State of Indiana, each application must be accompanied by the designation of resident agent for the service of process, which shall be on such form as the Commission from time to time may prescribe.

(c) Disposition of Application and Attached Exhibits. The original of the application form and one copy of the Interstate Commerce Commission operating authority attached thereto shall be retained by the Commission. One copy of the application shall be stamped (approved for filing), dated and transmitted to the motor carrier. This copy shall constitute an acknowledgment of the filing of such authority and no carrier may operate in interstate commerce within the borders of the State of Indiana until it has received from this Commission such acknowledgment of registration of operating authority. The third copy of the application shall be stamped (approved for filing) and forwarded by the Commission to the Indiana State Police.

(d) Registration of Each Subauthority; Separate Temporary Registration; Fee. Each subauthority which authorizes operation into or through the State of Indiana must be registered by the carrier before such operation may be commenced. Except as hereinafter provided, each temporary authority issued by the Interstate Commerce Commission must be registered by separate application. All applications shall be accompanied by the fee prescribed by law, except in those instances where such fee has been waived by reciprocal contract, agreement or arrangement with the State of Indiana.

(e) Exemption of Emergency or Temporary Authority–When. A motor carrier shall be required to file with the Commission only that portion of its authority permitting operation within the borders of the State of Indiana. A motor carrier shall not be required to file with the Commission an Interstate Commerce Commission emergency or temporary operating authority having a duration of thirty (30) consecutive days or less if such carrier has:

(1) Registered its other authority and identified its vehicles or driveaway operation under these Rules and Regulations; and

(2) Furnished to the Commission a telegram or other written communication in duplicate describing such emergency or temporary operating authority and stating that operation thereunder shall be in full accord with the requirements of these Rules and Regulations.

(f) Exemption of Authority Previously Registered. A motor carrier need not register under the provisions of these Rules and Regulations any authority issued by the Interstate Commerce Commission permitting operation within the borders of the State of Indiana when the same was properly registered with this Commission at the time these standards became effective.

(g) Special and Charter Service Exempt from Registration. This Rule *[this section]* shall not apply to the operation of special and charter bus service into or through the State of Indiana by any interstate common carrier transporting passengers over regular routes pursuant to a certificate of public convenience and necessity issued by the Interstate Commerce Commission.

(h) Registration Fee. Effective February 1, 1975, all applications for the registration of interstate authority, both temporary and permanent, to operate motor vehicles on the highways of Indiana in interstate commerce, which applications do not require a public hearing thereon, shall be accompanied by the following filing fee:

(1) Twenty-five dollars ($25) for a motor carrier which has not previously filed a currently effective application for the registration of interstate operating authority with this Commission; or

(2) Ten dollars ($10) for a motor carrier which has previously filed a currently effective application for the registration of interstate operating authority with this Commission.

For purposes of this Paragraph the registration fee shall be applicable to each certificate of public convenience and necessity or permit sought to be registered with this Commission. *(Department of State Revenue; No. 32257: Motor Carrier Department Rule 6; filed Jul 22, 1970, 9:15 am: Rules and Regs. 1971, p. 255; No. 33794: filed Nov 26, 1974, 10:25 am: Rules and Regs. 1975, p. 523; No. 33612: filed Aug 5, 1974, 2:30 pm: Rules and Regs. 1975, p. 528) NOTE: Changed by ICC to read "90 consecutive days or less ..." in State Registration of Emergency Temporary and Temporary Authority, Ex Parte No. MC-67, 119 MCC 327, on December 17, 1973, adopted 49 CFR Sec. 1131.7. Upheld in NARUC v. United States, 397 F Supp 591 (DCC1975), NARUC Bulletin No. 25-1975, p 22, affd. 46 L Ed(2d) 630 (1976), NARUC Bulletin No. 4-1976, p 13. NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-1-6) to the Department of State Revenue (45 IAC 16-1-6) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-1-7 Registration of interstate operations within interstate commerce commission exempt commercial zones; application; acknowledgment

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 7. REGISTRATION OF INTERSTATE OPERATIONS WITHIN THE INTERSTATE COMMERCE COMMISSION EXEMPT COMMERCIAL ZONES WITH THE COMMISSION. (a) Filing of Application Prior to Operation. Before any motor carrier operating pursuant to Section 203(b)(8) of the Interstate Commerce Act within the exempt commercial zones as defined by said Interstate Commerce Act or the Regulations of the Interstate Commerce Commission promulgated thereunder shall conduct any operations within the borders of the State of Indiana, said carrier shall execute the application in triplicate and submit the filing fees required of interstate carriers by the Motor Carrier Act of 1935, as amended, and by Rule 6 herein, on the form prescribed pursuant to said Act. In lieu of filing true copies of the interstate authority required by Rule 6, the carrier shall indicate by an exhibit attached to each copy of said application the nature of the operations which are to be conducted within the borders of the State of Indiana.

(b) Acknowledgement Issued by Commission–Limitation. The Commission shall issue to the motor carrier an acknowledgement of the filing of the application; no carrier may commence operations within any exempt commercial zone until it has received such acknowledgement from this Commission. The issuance of such acknowledgement by this Commission shall not constitute a grant of authority for the intrastate transportation of property or persons for hire between any point of origin and point of destination, both of which are within that part of an exempt commercial zone within the borders of the State of Indiana. *(Department of State Revenue; No. 32257: Motor Carrier Department Rule 7; filed Jul 22, 1970, 9:15 am: Rules and Regs. 1971,*

p. 256) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-1-7) to the Department of State Revenue (45 IAC 16-1-7) by P.L.72-1988, SECTION 12, effective July 1, 1988.

45 IAC 16-1-8 Registration of regular route deviations in interstate commerce; procedure; fees (Repealed)

Sec. 8. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 16-1-9 Allowed route deviations; application unnecessary

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 9. ROUTE DEVIATIONS ALLOWED WITHOUT APPLICATION. (a) On By-Passes Designated by State Highway Commission, Local Ordinance. All authorized common and contract carriers of property may operate over and upon the highways designated by the State Highway Commission of Indiana or by local ordinances as "By-Passes", and said carriers may deviate from their authorized route or routes as set forth in their certificates or permits in order to by-pass congested traffic and metropolitan areas.

(b) On Indiana East-West Toll Road for Operating Convenience. All authorized common and contract carriers of property who operate pursuant to certificates and/or permits over U. S. Highways 6, 20 and 30 or within twenty (20) miles of the Indiana East-West Toll Road may use said Toll Road for operating convenience only as an alternate or deviation route without obtaining additional operating authority from the Commission; provided that said carriers are destined to points on their regularly-authorized routes. *(Department of State Revenue; No. 32257: Motor Carrier Department Rule 9; filed Jul 22, 1970, 9:15 am: Rules and Regs. 1971, p. 257) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-1-9) to the Department of State Revenue (45 IAC 16-1-9) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-1-10 Vehicle identification; numbering and lettering

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 10. NUMBERING AND LETTERING OF MOTOR VEHICLES. (a) Method of Identification of Motor Vehicles Operated in Intrastate Commerce. No intrastate common or contract carrier for hire shall operate motor vehicles over the public highways of the State of Indiana unless there shall be displayed on both sides of each vehicle operated under its own power the name or trade name of the motor carrier under whose authority the vehicle or vehicles is or are being operated and the certificate or permit number assigned to such operating authority by the Commission. The certificate or permit number shall be in the following form: "P.S.C.I. No._____", but need not include any sub-numbers which may have been assigned. If the name of any person other than the operating carrier appears on a vehicle operated either alone or in combination under its own power, the name of the operating carrier shall be followed by the information required above and shall be preceded by the words "operated by".

(b) Size, Shape and Color. The display of name and number prescribed in this Rule *[this section]* shall be in letters and figures not less than one and three-fourths (1 3/4) of an inch in height nor shall said letters and figures be less than three-eighths (3/8) of an inch in letter-line or stroke width. All such letters and figures shall contrast in shape and color to the background on which they are displayed and shall be so located on each side of the motor vehicle as to be plainly visible to the traveling public at all times. If display is accomplished through use of a removable device, such device shall be firmly attached to the motor vehicle; it shall be constructed of durable material, such as wood, plastic or metal, and otherwise so prepared as to meet the identification and legibility requirements set out in this Rule *[this section]*.

(c) Passenger Vehicles–When Exempted; Procedure. Paragraphs (a), (b) and (e) of this Rule *[this section]* shall not apply to motor vehicles used in the transportation of passengers by common carriers when such vehicles are used in providing through transportation of passengers, in regular services, over the authorized routes of two or more of such carriers under a continuing interchange or lease of equipment arrangement between such carriers, if the vehicle owner's name and certificate numbers are displayed thereon in the manner provided in Paragraph (a) herein, and if there shall have been filed with the Director and posted in each terminal and ticket agency on the involved routes a published schedule of the carriers, clearly showing the points or places between which each carrier assumes and bears complete control and responsibility for the operation of the interchanged or leased vehicle.

(d) Method of Identification of Motor Vehicles Operated in Interstate Commerce. No interstate common or contract carrier

for hire shall operate motor vehicles over the public highways in the State of Indiana unless there shall be displayed on each such motor vehicle such identification of carrier name and operating authority as required by the Rules and Regulations of the Interstate Commerce Commission.

(e) Method of Identification for Motor Vehicles Operated in Both Interstate and Intrastate Commerce. No common or contract carrier for hire which holds authority to operate in both intrastate and interstate commerce within the borders of the State of Indiana shall operate motor vehicles over the public highways of said State unless there shall be displayed thereon the intrastate P.S.C.I. identification required by Paragraph (a) of this Rule *[this section]*, as well as the interstate identification required by Paragraph (d) of this Rule. *(Department of State Revenue; No. 32257: Motor Carrier Department Rule 10; filed Jul 22, 1970, 9:15 am: Rules and Regs. 1971, p. 257) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-1-10) to the Department of State Revenue (45 IAC 16-1-10) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-1-11 Annual vehicle registration identification stamps; fee

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 11. (a) Pursuant to IC 8-2-7-50 *[Repealed by P.L.72-1988, SECTION 10, effective March 1, 1990.]*, and except as provided by paragraphs (e) and (g) of this section, no motor vehicles, except vehicles operated in driveaway or towaway service, or any motor bus carrier operating a foreign licensed vehicle in interstate commerce in special or chartered service under the provisions of IC 8-2-7-29(b) *[Repealed by P.L.108-1983, SECTION 13, effective September 1, 1983.]*, shall be operated under any certificate of public convenience and necessity, permit or acknowledgement of registration of interstate authority without the operating carrier having first obtained a valid annual vehicle registration identification stamp issued by the commission for the motor vehicle. A motor carrier may apply for such number of stamps as it anticipates will be sufficient to cover its motor vehicles that will be placed in operation during the period for which such identification stamps are effective by completion of such application form as from time to time may be prescribed by law. A motor carrier may, from time to time, apply for the purchase of additional stamps and cab cards as needed.

(b) Upon receipt of an annual vehicle registration identification stamp for a motor vehicle, the carrier shall complete and execute a uniform identification cab card for such vehicle, which uniform identification cab card for motor vehicles operated solely in intrastate commerce shall be in such form as from time to time may be prescribed and approved by the commission. The uniform identification cab card for motor vehicles, including a motor vehicle providing the motive power for vehicles operated in driveaway and towaway service, operated in interstate or interstate-intrastate commerce shall be in such form as from time to time may be prescribed and approved by the interstate commerce commission. Each uniform identification cab card shall be typed or printed in indelible ink and maintained in the cab of the motor vehicle for which prepared whenever the vehicle is operated under the authority of the carrier identified on the cab card. Such cab card shall not be used for any vehicle except the vehicle for which it was originally prepared, unless as otherwise authorized by the commission under paragraph (f) of this section; i.e., a cab card shall terminate at the termination of the lease of the vehicle for which it is prepared, or on January 31 of the following year, whichever occurs first. Any erasure, alteration or unauthorized use of a cab card other than provided for in paragraph (f) of this section shall render it void. If a motor carrier permanently discontinues the use of a vehicle for which a cab card has been prepared, it shall nullify the cab card at the time of such discontinuance, unless such cab card is transferred to a replacement motor vehicle pursuant to paragraph (f) of this section.

(c) Upon execution of a uniform identification cab card for a motor vehicle, the carrier executing said cab card shall affix permanently thereon by use of the glue on the back of the identification stamp the proper annual vehicle registration identification stamp, which stamp may not thereafter be removed from said cab card or used on any other cab card. Any attempt to remove said identification stamp shall nullify both the identification stamp and the uniform cab card to which it is affixed.

(d) When a mailing or shipment of identification stamp(s) and/or cab card(s) by the commission is not received due to the failure of the U.S. Post Office or other carrier used by the commission to deliver such stamp(s) and/or cab card(s), the same will be replaced, provided the motor carrier advises the director of the motor carrier department of the nondelivery within thirty (30) days of the date of shipment by the commission; and further provided that an officer of said motor carrier, within three (3) days thereafter, executes a verified affidavit setting forth the circumstances of order and nondelivery of the stamp(s) and/or cab card(s) and forwards the same to the director of the motor carrier department.

In no other instance shall lost vehicle registration identification stamps be replaced by the commission.

(e) Any motor vehicle operated by any common or contract motor carrier under proper acknowledgement of registration of

interstate authority issued by this commission may traverse the highways of the state of Indiana in interstate commerce without a registration stamp issued by this commission, provided that said vehicle so operated is properly licensed in the state where fully qualified and registered; and further provided that the state in which the vehicle is registered has entered into a contract, agreement or arrangement with the state of Indiana pursuant to which like reciprocal privileges are extended by that state to motor carriers of the state of Indiana.

(f) (1) Each authorized common or contract motor carrier (hereinafter referred to as "authorized carrier") shall destroy a cab card immediately upon its expiration, except as otherwise provided in (2) of this paragraph.

(2) An authorized carrier permanently discontinuing the use of a vehicle, for which a Uniform Form D (interstate) Cab Card or Uniform Form D-1 (intrastate) Cab Card has been prepared, shall nullify said Cab Card at the time of such discontinuance; provided, however, that if such discontinuance results from destruction, loss or transfer of ownership of a vehicle and such carrier provides a newly-acquired vehicle in substitution therefor within thirty (30) days of the date of such discontinuance, each identification stamp and number placed on the Uniform Form D Cab Card or Uniform Form D-1 Cab Card prepared for such discontinued vehicle, if such card is still in the possession of the carrier, may be transferred to the substitute vehicle by compliance with the following procedure:

(A) Such authorized carrier shall duly complete and execute the form of certificate printed on the front of a new Uniform Form D Cab Card or New Uniform Form D-1 Cab Card, so as to identify itself and the substitute vehicle and shall enter the appropriate expiration date in the space provided below such certificate;

(B) Such authorized carrier shall indicate the date it terminated use of the discontinued vehicle by entering same in the space provided for an early expiration date which appears below the certificate of the Cab Card prepared for such vehicle; and

(C) Such authorized carrier shall affix the Uniform Form D Cab Card or Uniform Form D-1 Cab Card prepared for the substitute vehicle to the front of the Cab Card prepared for the discontinued vehicle, by permanently attaching the upper left-hand corners of both cards together in such a manner as to permit inspection of the contents of both cards and, thereupon, each identification stamp or number appearing on the card prepared for the discontinued vehicle shall be deemed to apply to the operation of the substitute vehicle.

(g) A person engaged in bona fide motor vehicle leasing business within the state of Indiana may purchase thirty-day temporary registration-identification forms for motor vehicles used as substitutes for long-term leased vehicles, provided the following procedure is fully complied with:

(1) the verified affidavit of an officer, partner or sole proprietor of a certificated motor carrier authorizing the bona fide lessor to purchase thirty-day temporary registration-identification forms is submitted with the application for the purchase of such forms; and

(2) the verified affidavit of an officer, partner or sole proprietor of bona fide lessor containing a list of all substitute motor vehicles to be used by the lessor is submitted with such application. Such affidavit shall contain the type, make, year, serial number, state of registration and name of the owner of the motor vehicle.

Upon payment of the proper fees and compliance with the requirements set out in this paragraph, the commission shall issue to the bona fide lessor thirty-day temporary registration-identification forms. Motor vehicles so identified may be used on any certificated operation as a substitute for motor vehicles subject to a long term lease from the bona fide lessor to a certificated carrier; provided that a separate thirty-day temporary registration-identification form is completed and used in the name of each carrier under whose P.S.C.I. authority the short-term replacement vehicle will be operated.

(h) Any common or contract motor carrier owning or operating a motor vehicle properly licensed in another state which is entitled to reciprocity with Indiana shall, when traversing the state of Indiana, display the Uniform Form D (Interstate) Cab Card required under paragraph (b) of this section and shall type or print in indelible ink the Indiana P.S.C.I. number issued to such carrier in the square bearing the name of the state of Indiana on the back of said Uniform Form D Cab Card. Said Uniform Form D Cab Card shall be carried on the vehicle, to be exhibited by the driver, upon demand, to any authorized officer of the Indiana state police or the commission.

(i) The annual registration fee required for motor vehicles operated by interstate carriers in Indiana shall be ten dollars ($10) for all trucks, buses and tractors operated by common or contract carriers of passengers and/or property. All fees set out in this subsection shall be due and payable between October 1st and December 31.

(j) Checks that are returned to the commission because of insufficient funds, closed accounts, etc. will be handled in the following manner:

(1) If a person makes a payment for identification stamps with a check and the commission is unable to obtain payment on the check for its full face amount when the check is presented for payment through normal banking channels, a penalty of

ten dollars ($10) will be imposed.

(2) When a penalty is imposed under subparagraph (1), a certified letter will be sent to the company with a copy of the returned check requesting that the carrier pay the dishonored check and penalty by remitting a cashier's check, certified check, money order, or cash to the commission within ten (10) days of receipt of the letter.

(3) Upon failure or refusal of any motor carrier to remit a cashier's check, certified check, money order or cash in accordance with subparagraph (2) of this paragraph, the carrier's certificate or permit and all operations thereunder shall be suspended for a period of thirty (30) days by order of the commission. During said suspension period the proper cashier's check, certified check, money order or cash shall be remitted to the commission, which remittance automatically shall act as a termination of the suspension and as a reinstatement of the certificate or permit of the carrier. If said remittance is not made during said thirty (30) days suspension period, then at the end of said period the certificate or permit of the carrier shall be cancelled and revoked without further order of the commission.

(Department of State Revenue; No. 32257: Motor Carrier Department Rule 11; filed Jul 22, 1970, 9:15 am: Rules and Regs. 1971, p. 259; No. 33233: filed Jun 12, 1973, 9:30 am: Rules and Regs. 1974, p. 543; No. 33233: filed Jun 12, 1973, 9:30 am: Rules and Regs. 1974, p. 544; No. 33794: filed Nov 26, 1974, 10:25 am: Rules and Regs. 1975, p. 523; No. 33612: filed Aug 5, 1974, 2:30 pm: Rules and Regs. 1975, p. 529; No. 33612: filed Aug 5, 1974, 2:30 pm: Rules and Regs. 1975, p. 530; No. 33612: filed Aug 5, 1974, 2:30 pm: Rules and Regs. 1975, p. 531; No. 33612: filed Aug 5, 1974, 2:30 pm: Rules and Regs. 1975, p. 532; No. 34223: filed Dec 4, 1975, 3:55 pm: Rules and Regs. 1976, p. 385; No. 35095: filed Dec 29, 1977: Rules and Regs. 1978, p. 703; filed Jan 3, 1983, 2:43 pm: 6 IR 319; errata, 6 IR 777) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-1-11) to the Department of State Revenue (45 IAC 16-1-11) by P.L.72-1988, SECTION 12, effective July 1, 1988.

45 IAC 16-1-12 Safety requirements; applicable federal regulations

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 12. SAFETY REQUIREMENTS. The Motor Carrier Safety Regulations prescribed and adopted by the Federal Highway Administration Bureau of Motor Carrier Safety not in conflict with the laws of the State of Indiana (except Part 394–Recording and Reporting of Accidents), and the laws of the State of Indiana are adopted as the Safety Rules and Regulations of this Commission. Provided, however, that where the laws of the State of Indiana recognize said Motor Carrier Safety Regulations as an alternative, compliance with said Regulations shall be sufficient. (Copies of said Motor Carrier Safety Regulations promulgated by the Federal Highway Administration Bureau of Motor Carrier Safety may be obtained from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402.) *(Department of State Revenue; No. 33233: Motor Carrier Department Rule 13; filed Jun 12, 1973, 9:30 am: Rules and Regs. 1974, p. 545) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-1-12) to the Department of State Revenue (45 IAC 16-1-12) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-1-13 Lease and interchange of vehicles; applicability of section; definitions; exemptions

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 13. (a) Applicability. This section applies to the augmenting of equipment by common and contract carriers of property by motor vehicles in intrastate commerce subject to the Act, IC 8-2-7 et seq. *[Repealed by P.L.72-1988, SECTION 10, effective March 1, 1990.]*, to the interchange of equipment between such common carriers of property by motor vehicle and to lease of equipment by common and contract carriers of property by motor vehicle, with or without drivers, to private carriers and shippers.

(b) Definitions. The following definitions are applicable to this section:

(1) Authorized Carrier. An authorized carrier shall mean a person or persons authorized to engage in the transportation of property as a common or contract carrier under the provisions of the Act, specifically IC 8-2-7-2(g), (h) and (i) *[Repealed by P.L.72-1988, SECTION 10, effective March 1, 1990.]*.

(2) Equipment. Equipment shall mean a motor vehicle, straight truck, tractor, semitrailer, full trailer, combination tractor-and-trailer, and or other type of equipment used by authorized carriers in the transportation of property for hire.

(3) Interchange of Equipment. Interchange of equipment shall mean the physical exchange of equipment between motor common carriers or the receipt by one such carrier of equipment from another such carrier, in furtherance of a through movement of traffic, at a point or points which such carriers are authorized to serve.

(4) Regular Employee. A regular employee shall mean a person who is not merely an agent but one who regularly is in exclusive full-time employment.

(5) Agent. An agent shall mean a person duly authorized to act for and on behalf of an authorized carrier.

(6) Owner. An owner shall mean a person: (1) to whom title to equipment has been issued; or (2) who as lessee has right to exclusive use of equipment for a period longer than 30 days; or (3) who has lawful possession of equipment and has the same registered and licensed in any State or States or the District of Columbia in his or its name.

(7) Shipper. A shipper shall mean a person who consigns or receives property which is transported in intrastate commerce.

(8) Private Carrier. The term "private carrier of property by motor vehicle" shall mean any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle," who or which transports by motor vehicle in intrastate commerce property of which such person is the owner, lessee or bailee, when such transportation is for the purpose of sale, lease, rent, bailment or in furtherance of any commercial enterprise.

(c) Exemptions. The provisions of Paragraph (d), except Subparagraphs (3) and (4) relative to inspection and identification of equipment, shall not apply in the following instances:

(1) Equipment used in the Direction of a Point Which Lessor is Authorized to Serve. To equipment owned or held under a lease of 30 days or more by an authorized carrier and regularly used by it in the service authorized, and leased by it to another authorized carrier for transportation in the direction of a point which lessor is authorized to serve: Provided, the two carriers first have agreed in writing that control and responsibility for operation of the equipment shall be that of the lessee from the time the equipment passes the inspection required to be made by lessee or its representative under Paragraph (d)(3) until such time as the lessor or its representative shall give to the lessee or its representative a receipt specifically identifying the equipment and stating the date and the time of day possession thereof is retaken, or until such time as the required inspection is completed by another authorized carrier taking possession of the equipment in an interchange of equipment where such use is contemplated. Such writing shall be signed by the parties or their duly authorized regular employees or agents and a copy thereof carried in the equipment while the equipment is in the possession of the lessee.

(2) Rail or Express Vehicles. To equipment utilized wholly or in part in the transportation of railway express traffic or in substituted motor-for-rail transportation or railroad freight moving between points that are railroad stations or railroad billing.

(3) Suburban Territory Operations. To equipment utilized in transportation performed solely and exclusively within any municipality or its suburban territory, as defined by IC 8-2-7-2(l) *[Repealed by P.L.72-1988, SECTION 10, effective March 1, 1990.]*.

(4) Vehicles Without Drivers From Rental Companies. To the lease of equipment without drivers by an authorized carrier from an individual, partnership or corporation whose principal business is the leasing of equipment without drivers for compensation.

(5) Non-Powered Equipment. To equipment other than a power unit: Provided, That such equipment is not drawn by a power unit leased from the lessor of such equipment.

(d) Augmenting Equipment. Other than equipment exchanged between motor common carriers in interchange service as defined in paragraph (e) of this section, authorized carriers may perform authorized transportation in or with equipment which they do not own only under the following conditions:

(1) Contract Requirements. The contract, lease or other arrangement for the use of such equipment must comply with the following requirements:

(A) Parties. The contract shall be made between the authorized carrier and the owner of the equipment.

(B) Written Contract Required. The contract shall be in writing and signed by the parties thereto, or their regular employees or agents duly authorized to act for them in the execution of contracts, leases or other arrangements.

(C) Minimum Duration of 30 Days When Operated by Lessor. It shall specify the period for which it applies, which shall be not less than 30 days when the equipment is to be operated for the authorized carrier by the owner or employee of the owner; excepting:

(i) Equipment Used in Agricultural or Perishable Operations. That subject to the provision in (cc) herein such 30-day minimum period shall not apply to equipment with driver:

(aa) Farmer, Cooperative Association or Federation–When Exempt. Where the motor vehicle so to be used is that of a farmer or a cooperative association or federation of cooperative associations as specified in IC 8-2-7-3(g) *[Repealed by P.L.72-1988, SECTION 10, effective March 1, 1990.]*, or is that of a private carrier of property by motor vehicle as defined in Paragraph (b) (8) herein and is used regularly in the transportation of property of a character embraced within IC 8-2-7-3(g) *[Repealed by P.L.72-1988, SECTION 10, effective March 1, 1990.]*

and the Commodity List adopted by the Commission, and such motor vehicle is to be used by the motor carrier in a single movement or in one or more of a series of movements, loaded or empty, in the general direction of the general area in which such motor vehicle is based; or

(bb) After Completion of Exempt Movement. Where the motor vehicle is one which has completed a movement covered by IC 8-2-7-3(g) *[Repealed by P.L.72-1988, SECTION 10, effective March 1, 1990.]* and such motor vehicle is next to be used by the motor carrier in a loaded movement in any direction, and/or in one or more of a series of movements, loaded or empty, in the general direction of the general area in which such motor vehicle is based; and

(cc) Statement Prerequisite to Movement. In either instance prior to the execution of the lease the authorized carrier shall receive and retain a statement signed by the owner of the equipment, or someone duly authorized to sign for the owner, authorizing the driver to lease the equipment for the movement or movements contemplated by the lessee certifying that the equipment so leased meets the qualifications enumerated in (aa) and (bb) herein and specifying the origin, destination and the time of the beginning and ending of the last movement which brought the equipment within its purview.

(ii) Automobile and Tank Truck Carriers. Such a 30-day minimum period shall not apply to equipment owned or held under lawful lease by an authorized automobile carrier or tank truck carrier and used in the transportation of motor vehicles or commodities in bulk, respectively, when leased or subleased to other such authorized carriers.

(iii) Ice and Snow Control Purposes. That such 30-day minimum period shall not apply to dump equipment leased or subleased for use in transportating *[sic.]* salt and/or calcium chloride, in bulk, for ice and snow control purposes, during the period from November 1 to April 30, both inclusive, of each year.

(D) Exclusive Possession and Responsibilities. The contract shall provide for the exclusive possession, control and use of the equipment, and for the complete assumption of responsibility in respect thereto by the lessee for the duration of the contract, lease or other arrangement, except:

(i) Lessee May be Considered as Owner. Provisions may be made therein for considering the lessee as the owner for the purpose of subleasing under this section to other authorized carriers during such duration.

(ii) Household Goods Carrier; Intermittent Operations Under Long-Term Lease. When entered into by authorized carriers of household goods for the transportation of household goods, as defined by IC 8-2-7-4(c) *[Repealed by P.L.72-1988, SECTION 10, effective March 1, 1990.]*, such provisions need only apply during the period the equipment is operated by or for the authorized carrier-lessee.

(E) Compensation to be Specified. It shall specify the compensation to be paid by the lessee for the rental of the leased equipment. Subject to the right of the lessee to delete confidential business information shown thereon which may be used to the detriment or prejudice of the shipper or consignee, the contract shall provide that the lessee, on demand of a lessor whose compensation under such lease is based upon a percentage or division of revenue, will, at the lesse's *[sic.]* option, either provide the lessor a copy of each extended freight bill covering the transportation involved or make reasonable arrangements for the lessor to inspect the same. The contract also shall specify, regardless of the method or manner in which compensation of the lessor is determined, the terms and conditions as to when payment of compensation is due and payable to the lessor and the circumstances, if any, when such compensation, in whole or in part, will be withheld.

(F) Duration to be Specific. The contract, lease or other arrangement shall specify the time and date or the circumstances on which it begins and the time or the circumstances on which it ends. The duration of the contract, lease or other arrangement shall coincide with the time for the giving of receipts for the equipment as required by subsection (2) of this section.

(G) Copies of Lease and Their Distribution; Copy to be Carried on Vehicle. It shall be executed in triplicate. The original shall be retained by the authorized carrier in whose service the equipment is to be operated, one copy shall be be *[sic.]* carried on the equipment specified therein during the entire period of the contract, lease or other arrangements unless a certificate as provided in paragraph (d)(4)(B) of this section is carried in lieu thereof.

(2) Receipts for Equipment to be Specific. When possession of the equipment is taken by the authorized carrier, or its regular employee or agent duly authorized to act for it, said carrier, employee or agent shall give to the owner of the equipment, or the owner's employee or agent, a receipt specifically identifying the equipment and stating the date and time of day possession thereof is taken. And when the possession by the authorized carrier ends, it or its employee or agent shall obtain from the

owner of the equipment, or the owner's regular employee or agent duly authorized to act for it, a receipt specifically identifying the equipment and stating therein the date and the time of day possession thereof is taken.

(3) Safety Inspection of Equipment by the Authorized Carrier. It shall be the duty of the authorized carrier, before taking possession of equipment, to inspect the same or to have the same inspected by a person who is competent and qualified to make such inspection and who has been duly authorized by such carrier to make such inspection as a representative of the carrier, in order to insure that the said equipment complies with the Motor Carrier Safety Regulations of the Federal Highway Administration of the Department of Transportation. The person making the inspection shall certify the results thereof on a report in the form hereinafter set forth, which report shall be retained and preserved by the authorized carrier; and if his inspection discloses that the equipment does not comply with the requirements of the said Safety Regulations, possession thereof shall not be taken. When such an inspection has been made, the authorized carrier, an officer or partner thereof, a safety director or other supervisory employee responsible for safety compliance shall certify on the inspection report that the person who made the inspection, whether an employee or person other than an employee, is competent and qualified to make such inspection and has been duly authorized to do so by such carrier as its representative. When equipment other than a power unit is leased, a form of report applicable to such equipment may be used.

REPORT OF VEHICLE INSPECTION

Description of vehicle:

Make _____ Year _____

Model _____ Serial No. _____

Type: Tractor _____ Trailer _____

Semitrailer _____

License plate: No. _____ State _____

Owner's name _____

Name of authorized carrier _____

Indicate in the proper column the result of the inspection of each item listed:

ITEM	NOT DEFECTIVE	DEFECTIVE	DESCRIPTION OF DEFECT
Body			
Brakes			
Cooling system			
Drive line			
Emergency equipment			
Engine			
Exhaust			
Fuel system			
Glass			
Horn			
Leaks			
Lights (state which)			
Reflectors			
Speedometer			
Springs			
Steering			
Tires			
Wheels			
Windshield wiper			

Any other items requiring attention _____

I hereby certify that on the _____ day of _____ I carefully inspected the equipment described above and that this is a true and correct report of the result of such inspection.

_____

(Signature of person making inspection)

I hereby certify that on the date stated above the person who made the inspection covered by this report was competent and qualified to make such inspection and was duly authorized to make such inspection as a representative of

(Name of authorized carrier)

(Signature of carrier, partner, officer, safety director, or other supervisory employee responsible for safety compliance.)

Date

(4) Identification of Equipment as that of the Authorized Carrier. The authorized carrier acquiring the use of equipment under this section shall properly and correctly identify such equipment during the period of the lease, contract or other arrangement in accordance with the Commission's requirements. If a removable device is used to identify the acquiring authorized carrier as the operating carrier, such device shall be on durable material such as wood, plastic or metal, and bear a serial number in the acquiring authorized carrier's own series so as to keep proper record of each of the identification devices in use.

(A) Identification to be Removed When Lease Terminated. The authorized carrier operating equipment under this section shall remove any legend showing it as the operating carrier displayed on such equipment and shall remove any removable device showing it as the operating carrier before relinquishing possession of the equipment.

(B) Certified Statement May be Carried on Vehicle in Lieu of Lease. Unless a copy of the lease, contract or other arrangement is carried on the equipment as provided in Subparagraph (d)(1)(G), the authorized carrier, its regular employee or agent shall prepare a statement certifying that the equipment is being operated by it, which shall specify the name of the owner, the date of the lease, contract or other arrangement, the period thereof, any restrictions therein relative to the commodities to be transported and the location of the premises where the original of the lease, contract or other arrangement is kept by the authorized carrier, which certificate shall be carried with the equipment at all times during the entire period of the lease, contract or other arrangement.

(5) Driver of Equipment to be in Compliance With Safety Regulations. Before any person other than a regular employee of the authorized carrier is assigned to drive equipment operated under this section, it shall be the duty of the authorized carrier to make certain that such driver is familiar with, and that his employment as a driver will not result in, violation of any provisions of the Motor Carrier Safety Regulations of the Federal Highway Administration of the Department of Transportation.

(6) Record of Equipment to be Maintained; Shipping Documents to Identify the Authorized Carrier. The authorized carrier utilizing equipment operated under this section for periods of less than 30 days shall prepare and keep a manifest or other documents covering each trip for which the equipment is used in its service, containing the name and address of the owner of such equipment, the point of origin, the time and date of departure, the point of final destination and the authorized carrier's serial number of any identification device affixed to the equipment. During the time that equipment subject to this section is operated, there shall be carried with the equipment, bills of lading, waybills, freight bills, manifests or other papers identifying the lading, and containing the foregoing information, which shall clearly indicate that the transportation of the property carried is under the responsibility of the authorized carrier, which papers shall be preserved by the authorized carrier. This Paragraph also shall apply with respect to vehicles leased for periods of 30 days or more unless that required information is kept at a terminal or office as a part of the records of the authorized carrier.

(e) Interchange of Equipment. Authorized common carriers may, by contract, lease or other arrangement, interchange any equipment defined in Paragraph (b) with one or more other such common carriers, or one of such carriers may receive from another such carrier, any of such equipment, in connection with any through movement of traffic, under the following conditions:

(1) Interchange Agreement to be Specific. The contract, lease or other arrangement providing for interchange shall specifically describe the equipment to be interchanged, the specific points of interchange, the use to be made of the equipment and the consideration for such use. Further, it shall be signed by all the parties to the contract, lease or other arrangement, or their regular employees or agents duly authorized to act for them in the execution of such contracts, leases or other arrangements.

(2) Operating Authority of Carriers Participating in Interchange. The certificates of public convenience and necessity held by the carriers participating in the interchange arrangement must authorize the transportation of the commodities proposed to be transported in the through movement and service from and to the point where the physical interchange occurs.

(3) Through Bills of Lading Required. The traffic transported in interchange service must move on through bills of lading issued by the origination carrier, and the rates charged and revenues collected must be accounted for in the same manner as

if there had been no interchange of equipment. Charges for the use of the equipment shall be kept separate and distinct from divisions of the joint rates or the proportions thereof accruing to the carriers by the application of local or proportional rates.
(4) Safety Inspection of Equipment. It shall be the duty of the carrier acquiring the use of equipment in interchange to inspect such equipment or to have it inspected in the manner provided in Subparagraph (d)(3). Equipment which does not meet the requirements of the Subparagraph shall not be operated in the respective services of the interchange carriers until the defects have been corrected. Where carriers interchanging equipment for a through movement of traffic are commonly controlled and jointly maintain and administer a uniform safety program, no such inspection at the point of interchange is required: Provided, That the equipment interchanged has been so inspected immediately prior to the start of the movement in which the interchange occurs and found to meet the requirements of Subparagraph (d)(3).
(5) Identification of Equipment as That of The Operating Carrier. Authorized carriers operating power units in interchange service shall identify such equipment in accordance with the Commission's requirements set out in 170 IAC 2-1-10. Any removable device used to identify the operating carrier shall be on durable materials, such as wood, plastic or metal, shall bear a serial number in the operating carrier's own series, and such carrier shall keep a proper record of each identification device in use. The authorized carrier operating equipment under this section shall remove any legend showing it as the operating carrier displayed on such equipment and shall remove any removable device showing it as the operating carrier before relinquishing possession of the equipment. Authorized carriers operating equipment in interchange service under this Paragraph shall carry with each vehicle so operated, except trailers and semitrailers, a copy of the contract or other arrangement while the equipment is being operated in the interchange service, unless a statement is carried in the vehicle while it is operated in interchange service, certifying that the equipment is being operated by it and identifying the equipment by company or State registration number, showing the specific point of interchange, the date and time of the assumption of the responsibility for the equipment and the use to be made of the equipment. Such statement shall be signed by the parties to the contract or other arrangement or their employees or agents.
(6) Connecting Carriers Considered as Owner. An authorized carrier receiving equipment in connection with a through movement shall be considered the owner of the equipment for the purpose of leasing the equipment to other authorized carriers in furtherance of the movement to destination or the return of the equipment after the movement is completed.
(f) Rental of Equipment to Private Carriers and Shippers.
(1) Rental of Equipment with Drivers. Unless such service is specified in their operating authorities, authorized carriers shall not rent equipment with drivers to private carriers or shippers.
(2) Rental of Equipment Without Drivers. Authorized common and contract carriers shall not rent equipment without drivers to private carriers or shippers.
(g) Single Source Leasing. Nothing in these rules should be interpretted *[sic.]* to be in conflict with IC 8-2-7-52 *[Repealed by P.L.72-1988, SECTION 10, effective March 1, 1990.]*. *(Department of State Revenue; No. 35095: Motor Carrier Department Rule 14; filed Dec 29, 1977: Rules and Regs. 1978, p. 707; No. 35256: filed Apr 12, 1978, 11:25 am: Rules and Regs. 1979, p. 226; filed Oct 21, 1986, 10:40 am: 10 IR 391; errata filed Jun 22, 1989, 9:00 a.m.: 12 IR 2063) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-1-13) to the Department of State Revenue (45 IAC 16-1-13) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-1-14 Advertising by carriers of household goods

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 14. ADVERTISING BY MOTOR COMMON CARRIERS OF HOUSEHOLD GOODS. (a) Contents of Advertisement. Every motor common carrier engaged in the transportation of household goods in intrastate commerce, including any carrier providing any accessorial service incidental to or part of such intrastate transportation, shall include, and shall require each of its agents to include, in every advertisement as defined in Paragraph (c) of this Rule *[this section]* the name or trade name of the motor carrier under whose operating authority the advertised service will originate, and the certificate or docket number assigned to such operating authority by the Commission.

(b) Form of Certificate or Docket Number. Such certificate or docket number shall be in the following form in every advertisement: “P.S.C.I. Certificate No._____” but shall not include any subnumbers which may have been assigned.

(c) Advertisement Defined. The term “advertisement” means any communication to the public, in written or printed form, in connection with an offer or sale of any intrastate service, but shall not be construed to include a simple listing of a carrier's name,

address and telephone number. *(Department of State Revenue; No. 35014: Motor Carrier Department Rule 15; filed Sep 15, 1977, 11:06 am: Rules and Regs. 1978, p. 667) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-1-14) to the Department of State Revenue (45 IAC 16-1-14) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-1-15 Annual reports; filing requirements

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 15. FILING OF ANNUAL REPORTS. (a) General. On or before the 30th day of April of each year every motor carrier operating motor vehicles for hire, intrastate, over the public highways of the State of Indiana, under a certificate of public convenience and necessity or permit issued by the Commission, shall file with the Commission an annual report for the preceding calendar year. Said reports shall be filed on such forms as from time to time may be prescribed and approved by the Commission.

(b) Carriers Engaged in Both Intrastate and Interstate Commerce. Motor carriers engaged in both intrastate and interstate commerce required to file annual reports with the Interstate Commerce Commission may file copies thereof with this Commission, which will be considered in full compliance with this rule *[this section]*.

(c) Carriers Engaged Solely in Interstate Commerce. Motor carriers engaged solely in interstate commerce shall not be required to file annual reports with the Commission.

(d) Carriers Engaged Solely in Urban Mass Transportation. Motor carriers of passengers, operating pursuant to the Urban Mass Transportation Act of 1965, I.C. 19-5-2 *[IC 19-5 was repealed by P.L.77-1982, SECTION 29, effective July 1, 1982.]*, et seq., shall not be required to file annual reports with the Commission.

(e) Failure to File Annual Reports. Upon the failure or refusal of any motor carrier to file an annual report in accordance with Paragraphs (a) and (b) of this Rule *[this section]*, the carrier's certificate or permit and all operations thereunder shall be suspended for a period of thirty (30) days by order of the Commission. During said suspension period the delinquent annual report shall be filed with and be subject to the approval of the Commission, which filing and approval by the Commission automatically shall act as a termination of the suspension and as a reinstatement of the certificate or permit of the carrier. If said filing and approval are not made during said thirty (30) day suspension period, then at the end of said period the certificate or permit of the carrier shall be cancelled and revoked without further order of the Commission. The Commission will not approve the sale and transfer of any such certificate or permit unless there has been full compliance with Paragraphs (a) and (b) of this Rule *[this section]*. *(Department of State Revenue; No. 35095: Motor Carrier Department Rule 16; filed Dec 29, 1977: Rules and Regs. 1978, p. 715) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-1-15) to the Department of State Revenue (45 IAC 16-1-15) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-1-16 Separability

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 16. SEPARABILITY. If any provision of these Rules or the application thereof to any person or circumstances is invalid, such invalidity shall not affect the other provisions or applications of these Rules, which can be given effect without the invalid provision or application, and to this end, the provisions of these Rules are declared to be separable. *(Department of State Revenue; No. 32257: Motor Carrier Department Rule 14; filed Jul 22, 1970, 9:15 am: Rules and Regs. 1971, p. 262; No. 33233: filed Jun 12, 1973, 9:30 am: Rules and Regs. 1974, p. 550; No. 35014: filed Sep 15, 1977, 11:06 am: Rules and Regs. 1978, p. 668) NOTE: Renumbered Rule 16 by 1974 amendment. Renumbered Rule 18 by 1978 amendment. NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-1-16) to the Department of State Revenue (45 IAC 16-1-16) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

Rule 1.5. Motor Carrier Practice and Procedure Before the Commission

NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 1-1.2) to the Department of State Revenue (45 IAC 16-1.5) by P.L.72-1988, SECTION 12, effective July 1, 1988. Wherever in any promulgated text there appears a reference to 170 IAC 1-1.2, substitute 45 IAC 16-1.5.

45 IAC 16-1.5-1 Application and scope; definitions

Authority: IC 8-2.1-18-6
Affected: IC 8-2; IC 8-2.1-18

Sec. 1. (a) These rules (170 IAC 1.2 *[sic., 170 IAC 1-1.2]*) shall govern the practices and procedure in matters before the public service commission of Indiana, arising under Acts of the General Assembly of the state of Indiana conferring powers and duties upon said commission, IC 8-2, et. seq. These rules shall supersede totally 170 IAC 1-1.

(b)(1) "Commission" means the public service commission of Indiana.

(2) "Applicant" means any person or entity filing an application for a certificate or permit with the commission.

(3) "Protestant" means any person or entity opposed to the relief sought by any applicant, who has notified the commission and the applicant of its intention to appear at least five (5) days prior to the date of the hearing.

(4) "Interested party" means any person interested in such proceeding who may appear in person or by attorney and offer evidence in support of or in opposition to the relief requested. An interested party need not be represented by an attorney, and he/she is not entitled to cross-examine any witnesses.

(5) "Presiding officer" means any member of the commission or administrative law judge empowered to conduct proceedings before the commission.

(6) "Complainant" means any person or entity who initiates a formal complaint against any carrier pursuant to IC 8-2 et. seq.

(7) "Respondent" means any person or entity who must respond to any order of the commission, or against whom a proceeding or investigation is initiated.

(8) "Pleading" means any application, petition, protest, answer, reply, motion or other similar document filed to initiate or in the course of any proceeding before the commission. *(Department of State Revenue; 45 IAC 16-1.5-1; filed Oct 21, 1986, 10:37 am: 10 IR 382) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 1-1.2-1) to the Department of State Revenue (45 IAC 16-1.5-1) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-1.5-2 Filings with motor carrier division of the commission

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 2. The filing of any pleading with the motor carrier division of the commission may be made through the United States mail or in person as follows:

(1) Filings made by mail shall be deemed to be filed on the date of receipt by the motor carrier division, except for exceptions to an order which are deemed to be received the date the document is deposited in the United States mail. All such filings shall be addressed to: Director of Transportation, Motor Carrier Division, Public Service Commission, 309 W. Washington Street, Suite 601, Indianapolis, IN 46204.

(2)(A) Filings made in person shall be deemed to be filed on the date of receipt by the director of transportation, except that no filing shall be accepted outside of the regular business hours of the commission, and (B) the presiding officer at any hearing may permit appropriate pleadings to be filed at that hearing.

(Department of State Revenue; 45 IAC 16-1.5-2; filed Oct 21, 1986, 10:37 am: 10 IR 383) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 1-1.2-2) to the Department of State Revenue (45 IAC 16-1.5-2) by P.L.72-1988, SECTION 12, effective July 1, 1988.

45 IAC 16-1.5-3 Appearances and attorneys

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 3. (a) Any person may appear and represent his or her own interest before the commission. The interest of another person or entity shall be represented only by an attorney authorized to practice before the commission, pursuant to this section.

(b)(1) Any attorney admitted to practice before the Supreme Court of the state of Indiana, and in good standing, may practice in all proceedings before the commission.

(2) Upon verified written application to the commission, an attorney admitted to practice before the Supreme Court of the United States, or the highest court of any other state of the United States, and in good standing, may be admitted to practice before

the commission. Pending approval of such application, an attorney may be permitted to appear, at the discretion of a presiding officer at any hearing.

(c) Any withdrawal of appearance by an attorney on behalf of any party shall be in writing and by leave of the presiding officer. Permission to withdraw shall be given only after the withdrawing attorney has given his client ten (10) days written notice of his intent to withdraw and has filed a copy of that letter with the commission; or upon simultaneous entering of appearance by new counsel for the party. The letter of intent to withdraw shall inform the client of any upcoming hearing date and explain that failure to secure new counsel may result in the party being unrepresented at hearing and for a petitioner or complainant may result in dismissal of its case. In no event will the presiding officer grant a request for withdrawal of appearance unless the request has been filed with the commission at least ten (10) days prior to any hearing date, except for good cause shown. *(Department of State Revenue; 45 IAC 16-1.5-3; filed Oct 21, 1986, 10:37 am: 10 IR 383) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 1-1.2-3) to the Department of State Revenue (45 IAC 16-1.5-3) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-1.5-4 Pleadings; general requirements

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 4. (a) All pleadings filed with the commission shall be signed either by an attorney eligible to practice before the commission or by each person joining therein in the manner following: by the person, if an individual; by a partner, if a partnership; by a corporate officer, if a corporation; if a municipal corporation, by an officer duly authorized to sign such pleading; and by a bona fide general officer, if an unincorporated association. In the case of a corporation having its principal office outside the state of Indiana, pleadings may be signed by an employee serving as managing agent of the corporation's Indiana operations.

(b) Petitions and complaints may be amended or supplemented only upon written or oral motion seeking leave of the presiding officer. Leave shall be granted upon a showing that little or no prejudice will result to any other party to the proceeding. Other pleadings may be amended, or supplemented so as to set forth matters occurring since filing upon such terms as the presiding officer deems proper.

(c) Except as required by law or otherwise provided herein, pleadings need not be verified. The signature of the party, if an individual, or by a duly authorized representative, if the party is an entity, or by the attorney for the party shall constitute a certificate that he has read the pleading that to the best of his knowledge, information and belief, that there is good ground to support it; and that it is not interposed solely for delay. Where a pleading, motion, supporting affidavit or other document of any kind is required to be verified, or where an oath is required to be taken, it shall be sufficient if a representative of the party and not the attorney simply affirms the truth of the matter to be verified. The party's affirmation shall be in the following language:

"I (we) affirm under penalties for perjury that the foregoing representation(s) is (are) true.

(Signed)_____"

(d) Any individual who knowingly falsified an affirmation or representation of fact shall be subject to the same penalties as are prescribed by law for perjury, pursuant to IC 35-44-2-1. *(Department of State Revenue; 45 IAC 16-1.5-4; filed Oct 21, 1986, 10:37 am: 10 IR 383) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 1-1.2-4) to the Department of State Revenue (45 IAC 16-1.5-4) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-1.5-5 Complaints

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 5. (a) In addition to the matters required by 170 IAC 1-1.2-4 complaints shall state the name of each respondent and of each other individual or entity, if any, who under any applicable statute or rule or form prescribed by the commission, is required to be named in the complaint because of his interest or possible interest in the subject matter. Such complaint shall state the address of each respondent, individual or entity if such address is known (or, if unknown, the fact that each of the parties joining in the complaint has been unable to ascertain such address upon reasonable inquiry).

(b) The caption of the complaint shall describe in general terms all the relief being sought in the petition.

(c) In addition to the matters required by 170 IAC 1-1.2-4, complaints shall contain:

(1) a plain and concise statement of the facts showing the interest of the complainant or each of the complainants, in the

matters involved in the proceeding;

(2) a plain and concise statement of the facts which is deemed to necessitate or justify relief;

(3) a reference to the statutes by which the commission has jurisdiction and sections thereof or rules of the commission which are deemed applicable; and

(4) specific prayers for the relief which is deemed appropriate.

(d) A complaint shall comply with the requirements of the statute under which it is filed. *(Department of State Revenue; 45 IAC 16-1.5-5; filed Oct 21, 1986, 10:37 am: 10 IR 384) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 1-1.2-5) to the Department of State Revenue (45 IAC 16-1.5-5) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-1.5-6 Answers

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 6. (a) In addition to all matters required by 170 IAC 1-1.2-4, answers to any complaint must conform to the following:

(1) Answers shall be filed with the commission within twenty (20) days after the date of receipt of service unless a different time is prescribed by law or by the commission.

(2) The answer to a complaint shall set forth, in paragraphs numbered to correspond with the complaint, the facts upon which the respondent relies. All answers shall be in writing, and so drawn as fully and completely to advise the parties and the commission of the nature of the defense. They shall admit or deny specifically and in detail each material allegation of the pleading answer, and state clearly and concisely the facts and matters of law relied upon.

(3) Any respondent failing to file an answer within the applicable period shall be deemed to be in default, and all relevant basic facts stated in such complaint or petition may be deemed admitted.

(b)(1) In its answer, a respondent may seek relief against other parties in a proceeding by reason of the presence of common questions of law or fact. The respondent shall set forth in the answer the facts constituting the grounds of complaint, the provisions of the statutes, rules, regulations, or orders relied upon, the injury complained of, and the relief sought. The answer shall in all other respects conform to the requirements of 170 IAC 1-1.2 for answers generally.

(2) Unless otherwise ordered by the commission, replies to answers seeking affirmative relief shall be filed with the commission within ten (10) days after receipt of service of the answer, but not later than five (5) days prior to the date set for the commencement of the hearing, if any.

(c) Any person upon whom an order to show cause has been served pursuant to IC 8-2-7-6 *[IC 8-2-7 was repealed by P.L.72-1988, SECTION 10, effective March 1, 1990.]* shall, if directed to do so, respond to the same by filing with the commission, within the time specified in said order, an answer in writing. Such answer shall be drawn so as to specifically admit or deny the allegations or charges which may be made in said order, set forth the facts upon which respondent relies, and state concisely the matters of law relied upon. Mere general denials of the allegations of an order to show cause which are unsupported by specific facts upon which respondent relies, will not be considered as complying with this section and may be deemed a basis for entry of a final order without hearing, unless otherwise required by statute, on the ground the response has raised no issues requiring a hearing or further proceedings. Any respondent failing to file an answer within the time allowed shall be deemed in default, and all relevant facts stated in the order to show cause may be deemed admitted.

(d) Any participant may file an answer to any amendment, modification or other pleading. If made, the answer shall be filed with the commission within ten (10) days after the date of receipt of service of the amendment, modification or supplement, unless for cause the commission or presiding officer with or without motion shall prescribe a different time. *(Department of State Revenue; 45 IAC 16-1.5-6; filed Oct 21, 1986, 10:37 am: 10 IR 384) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 1-1.2-6) to the Department of State Revenue (45 IAC 16-1.5-6) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-1.5-7 Petitions

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 7. (a) In addition to the matters required by 170 IAC 1-1.2-4 petitions shall contain:

(1) a plain and concise statement of the facts showing the interest of the petitioner, or each of the petitioners, in the matters involved in the proceeding;

(2) a plain and concise statement of the facts which are deemed to necessitate or justify relief;

(3) a reference to these statutes by which the commission has jurisdiction and sections thereof or rules of the commission which are deemed applicable; and

(4) specific prayers for the relief which is deemed appropriate.

(b) The caption of the petition shall describe in general terms all the relief being sought in the petition.

(c) A petition shall comply with the requirements of the statute under which it is filed.

(d) A petition to the commission for the issuance, amendment, or repeal of a regulation shall set forth clearly and concisely the interest of the petitioner in the subject matter, the specific regulation, amendment, or repeal requested, and shall cite by appropriate reference the statutory provision or other authority thereof. Such petition shall set forth the purpose of, and the facts claimed to constitute the grounds requiring such regulation, amendment, or repeal. Petitions for the issuance or amendment of a regulation shall incorporate the proposed regulation or amendment. *(Department of State Revenue; 45 IAC 16-1.5-7; filed Oct 21, 1986, 10:37 am: 10 IR 385) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 1-1.2-7) to the Department of State Revenue (45 IAC 16-1.5-7) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-1.5-8 Service

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 8. (a) When service is effected by mail, first class mail shall be used.

(b) Orders, notices, and other documents originating with the commission, including all forms of commission action and similar process, and other documents designated by the commission for this purpose, shall be served by the commission by mail, except when service by another method shall be specifically required by the commission, by mailing a copy thereof to the person to be served, addressed to the person or persons designated in the initial pleading, submittal or notice of appearance at his or its principal office or place of business. When delivery is not accomplished by mail, it may be effected by any one *[sic.]* duly authorized by the commission.

(c) All pleadings, submittals, briefs, and other documents, filed in proceedings pending before the commission, by any party, when filed or delivered to the commission for filing, shall be served upon all participants in the proceeding.

(d)(1) In any proceeding where any attorney has filed a pleading or submittal on behalf of a client or has entered an appearance pursuant to 170 IAC 1-1.2-2, any notice or other written communication required to be served upon or furnished to the client shall be served upon or furnished to the attorney in the same manner as prescribed for his client.

(2) When any participant has appeared by attorney, service upon such attorney shall be deemed service upon the participant and separate service on the participant may be omitted.

(e) The date of service shall be the day when the document served is deposited in the United States mail, or is delivered in person, as the case may be.

(f) There shall accompany and be attached to the original of each pleading, submittal, or other document filed with the commission when service is required to be made by the parties, a certificate of service.

(g) The form of a certificate of service shall be as follows:

I hereby certify that I have this day served a true copy of the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 170 IAC 1-1.2-8.

Dated this _____ day of _____, 19_____
Signed _____
Counsel for _____

(Department of State Revenue; 45 IAC 16-1.5-8; filed Oct 21, 1986, 10:37 am: 10 IR 385) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 1-1.2-8) to the Department of State Revenue (45 IAC 16-1.5-8) by P.L.72-1988, SECTION 12, effective July 1, 1988.

45 IAC 16-1.5-9 Subpoenas

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 9. (a) Subpoenas for the attendance of witnesses and subpoenas duces tecum shall be issued at the request of any party.

Subpoenas shall be signed by the secretary, or a member of the commission, and shall be issued under the seal of the commission.

(b) Parties shall prepare subpoenas for issuance and shall be responsible for service, which shall be shown by the return of the sheriff or the affidavit of the party or attorney serving the same. Such return of affidavit shall be promptly filed with the commission.

(c) Upon motion made at or before the time specified for compliance in any such subpoena, the commission may quash or modify the subpoena if it is unreasonable, untimely, or seeks no relevant evidence. *(Department of State Revenue; 45 IAC 16-1.5-9; filed Oct 21, 1986, 10:37 am: 10 IR 386) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 1-1.2-9) to the Department of State Revenue (45 IAC 16-1.5-9) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-1.5-10 Discovery

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 10. (a) Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things. It is not grounds for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(b) All discovery requests shall be made in writing and served upon all parties. Discovery may be conducted without filing such requests with the commission.

(c)(1) Any party against whom discovery is directed shall satisfy the request within (30) days following receipt thereof or reach an agreement with the requesting party as to the nature, scope and time schedule for the requested discovery. An evasive or incomplete answer, if made in bad faith, shall be considered a failure to answer.

(2) Any party against whom discovery is directed may object to a discovery request. The objection must be made in writing and specifically enumerate which items of the discovery request are objectionable and why. Any objection to a discovery request shall be made within ten (10) days of receipt of the request or such objection shall be deemed waived.

(3) If a party against whom discovery is directed fails to satisfy the request within the required or agreed time schedule or objects to the discovery request, the party seeking discovery may file with the commission a written motion to compel discovery attaching a copy of the discovery request and any objections and setting forth the reasons why such discovery shall be filed within seven (7) days following receipt of service of the motion, unless the presiding officer shall prescribe a different time. Any reply to responses shall be filed within five (5) days of receipt of service of the response, unless the presiding officer shall prescribe a different time.

(4) The party against whom discovery is directed may file a motion for protective order seeking protection from unduly burdensome, oppressive or unreasonably duplicative discovery or seeking to establish reasonable guidelines for the discovery sought.

(5) In order to serve the public interest and expedite the discovery process, the presiding officer, with or without motion, may call an informal attorneys' conference to be conducted off the record of the proceeding, for the purpose of discussing, hearing argument on, and resolving discovery disputes. The presiding officer shall have authority to participate in the discussions and assist the parties in resolving discovery disputes. The rulings of the presiding officer made at such conference shall be reduced to writing in the form of a docket entry and shall be binding upon all the parties.

(d) A party who has responded to a request for discovery with a response which was complete when made, is under no duty to supplement his response to include information thereafter acquired unless that party later learns that his response is incorrect, in which case such party is under a duty to reasonably correct the response.

(e) Protestants should make every attempt to properly coordinate discovery so as to avoid duplication. Accordingly, all requests for discovery shall be served upon all parties to a proceeding. In addition, all responses made to discovery requests shall be served upon all of the parties to the proceeding. In the event that requests for discovery nonetheless become overly duplicative, the responding party may consolidate answers so as to avoid unnecessary duplication. However, the responding party is still under the obligation to adequately respond in good faith to the substance of all of the requests of each of the parties to the proceeding.

(f) In accordance with Rule 28(F) of the Indiana Rules of Trial Procedure, any situation not specifically addressed by this section shall be governed by Rules 26 through 37 inclusive of the Indiana Rules of Trial Procedure, insofar as said Rules do not conflict with the provisions of IC 8-1-2-29. *(Department of State Revenue; 45 IAC 16-1.5-10; filed Oct 21, 1986, 10:37 am: 10 IR 386) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 1-1.2-10) to the Department of State Revenue (45 IAC 16-1.5-10) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-1.5-11 Motions

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 11. (a) Motions shall set forth the ruling or relief sought, and shall state the grounds therefor and the statutory or other authority relief *[sic.]* upon.

(b) Motions may be made in writing at any time, and motions made during hearings may be stated orally upon the record, or the presiding officer may require that such oral motions be reduced to writing and filed separately.

(c) Any party may respond to any motion. Responses to motions made during hearings may be stated orally upon the record, or the presiding officer may require that such oral responses be reduced to writing and filed separately. Responses to written motions shall be filed with the commission within ten (10) days after the date of the receipt of service of the motion, unless the presiding officer shall prescribe a different time.

(d) The party originally making or filing any such motion to which another party responds may reply to such response. Replies may be made orally during hearings or if made in writing, shall be filed with the commission within seven (7) days after the date of receipt of service of that response, unless the presiding officer shall prescribe a different time.

(e) The presiding officer is authorized to rule and shall rule upon any motion not formally acted upon by the commission prior to the commencement of the hearing where immediate ruling is essential in order to proceed with the hearing, and upon any motion filed or made after the commencement of the hearing and prior to the submission of a decision in the proceeding. The presiding officer by initial decision may render a final determination with regard to any motion prior to the termination of hearing including a question of jurisdiction, the establishment of a prima facie case, or standing. Motions made during the course of hearing, which if granted would otherwise dispose of a party's rights, should be acted upon by the presiding officer prior to taking further testimony if, in the opinion of the presiding officer, such action is warranted. *(Department of State Revenue; 45 IAC 16-1.5-11; filed Oct 21, 1986, 10:37 am: 10 IR 387) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 1-1.2-11) to the Department of State Revenue (45 IAC 16-1.5-11) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-1.5-12 Motor carrier protestants

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 12. (a) Any individual or entity opposed to relief sought in any motor carrier case may become a party protestant at the hearing provided he has notified the commission and the applicant or applicant's attorney in writing of his intention to protest the application, at least five (5) days prior to the date of the initial hearing.

(b) A party who files timely notice of intention to protest in accordance with the provisions of subsection (a) of this section hereof shall be considered a party of record and shall be served with all pleadings, notices or orders thereafter issued or filed in this cause.

(c) When no protests are filed, the initial hearing shall be summary in nature, and it shall be sufficient for the applicant to present verified testimony or affidavits necessary to meet its burden of proof pursuant to Indiana law.

(d) When protests have been filed pursuant to subsection (a) of this section, the initial hearing shall be a prehearing conference for the purpose of:

(1) the simplification of issues;

(2) amending the pleading either for the purpose of clarification, amplification or limitation;

(3) making admissions of certain averments of facts or stipulations concerning the use by any party of matters of public record, to the end of avoiding the unnecessary introduction of proof;

(4) determining the procedure at the hearing;

(5) limiting the number of witnesses;

(6) determining the propriety of prior mutual exchange between or among the parties of prepared testimony and exhibits;

(7) discussing such other matters as may aid in the simplification of the evidence and disposition of the proceeding, including but not limited to, matters regarding discovery.

(e) Action taken at the prehearing conference including a recitation of the amendments allowed to the pleadings, and the agreements made by the parties shall be in writing unless the parties enter upon a written stipulation as to such matters, or agree to a statement thereof to be made on the record by the presiding officer at the hearing.

(f) If the presiding officer determines that only procedural issues need to be determined at the prehearing conference, the parties need not appear at the initial hearing and the presiding officer at his/her discretion may issue a docket entry setting forth the procedural schedule and said entry shall be binding on all parties of record.

(g) If the prehearing conference results in the withdrawal of all protestants, a summary hearing as described in subsection (c) of this section will be held either at that time or at a subsequent summary hearing.

(h) If an application for the sale and transfer of operating authority is pending before the commission and an individual or entity alleges that the operating authority being transferred has not been continuously operated, that party shall notify the commission and each of the joint applicants of that allegation at least five (5) days prior to the initial hearing on such sale and transfer. Any party alleging such dormancy, in whole or in part, shall have the burden of proof of such allegation. The matter of dormancy must be determined prior to a determination on the issue of approval or denial of the sale and transfer application. *(Department of State Revenue; 45 IAC 16-1.5-12; filed Oct 21, 1986, 10:37 am: 10 IR 387) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 1-1.2-12) to the Department of State Revenue (45 IAC 16-1.5-12) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-1.5-13 Hearing procedure

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 13. (a) Hearings will be conducted by the commission, a commissioner, or administrative law judge.

(b) The presiding officer before whom the hearing is held shall cause to be entered upon the record all appearances, with a notation in whose behalf each appearance is made.

(c) In hearings upon applications, formal complaints, or petitions, the applicant, complainant, petitioner, or other party having the burden of proof, as the case may be, shall open and close, unless otherwise directed by the presiding officer. In hearings on investigations and in proceedings which have been consolidated for hearing, the presiding officer may direct who shall open and close. However, in proceedings where the evidence is peculiarly within the knowledge or control of another participant, the order of presentation may be varied by the presiding officer.

(d) When objections to the admission or exclusion of evidence before the commission or the presiding officer are made, the grounds relied upon shall be stated briefly.

(e) The presiding officer may, during the hearing, permit a party to furnish designated exhibits after the close of the hearing with copies to all parties of record. Any such exhibit shall be specifically described and assigned an identifying exhibit number at the time of hearing and may be admitted into the record of the proceeding with physical production at a later time, provided no party objects or if objected to, the presiding officer shall direct the mode of admissibility, including granting the objecting party reasonable opportunity to question the preparer of the exhibit regarding its contents. Provided, however, that this section in no way makes evidence admissible, which would otherwise be inadmissible.

(f) The prepared testimony of a witness for any party need not be in question and answer form but must be coherently outlined in relatively short paragraphs to facilitate objections. It shall have attached any related exhibits. Unless otherwise provided by the presiding officer, an original and one (1) copy of such prepared testimony and exhibits must be received by the commission and served on all parties to the proceeding at least five (5) days prior to the date of the hearing.

(g) Unless otherwise directed by the commission, pre-filed testimony, when properly authenticated by the witness under oath or affirmation, may be transcribed into the record or marked as an exhibit. Such written testimony shall be subject to the same rules of admissibility and cross-examination of the sponsoring witness as if the testimony were being presented orally.

(h) Any party to a proceeding may move for an extension of time in which to pre-file testimony. However, at the discretion of the presiding officer, the hearing may be rescheduled to a later date, and the extension of time in which to pre-file such testimony fixed, to avoid undue delay and provide opportunity for all parties to properly prepare their cases. If the protestants late file their prefiled testimony without just cause, the protests shall be stricken and they shall remain in the proceeding as interested parties.

(i) Due legal notice of the initial public hearing in any proceeding having been given and published as required by law, notice of further hearing or other matters in such proceeding need not be published. The commission may, but shall not be required to, mail written notice of such further hearings or proceedings to the attorney of record for each party.

(j) After being duly notified, any party who fails to be represented at a scheduled conference or hearing in any proceeding shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished at such conference or hearing, or to recall for further examination any witnesses

who were excused unless the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other participants and of the public would not be prejudiced by permitting such reopening of further examination.

(k) With the approval of the commission, corrections or changes in the stenographic record may be made upon the written agreement of all parties of record filed with the commission within ten (10) days after the stenographic record has been completely transcribed.

(l) Parties may obtain copies of the stenographic record from the official reporter upon payment of the appropriate charges fixed by the commission. *(Department of State Revenue; 45 IAC 16-1.5-13; filed Oct 21, 1986, 10:37 am: 10 IR 388) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 1-1.2-13) to the Department of State Revenue (45 IAC 16-1.5-13) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-1.5-14 Evidence

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 14. (a) Relevant and material evidence is admissible subject to objection on other grounds, but there shall be excluded such evidence as is unduly repetitious or cumulative.

(b) Any participant shall move the admission of evidence into the record upon presentation of the sponsoring witness and authentication.

(c) The presiding officer shall have all necessary authority to control the receipt and admissibility of evidence, including:

(1) ruling on the admissibility of evidence; and

(2) confining the evidence to the issues in the proceeding and impose, where appropriate:

(A) limitations on the number of witnesses to be heard;

(B) limitations of time and scope for direct and cross-examinations;

(C) limitations on the production of further evidence; and

(D) any other necessary limitations.

The presiding officer shall actively employ these powers to direct and focus the proceedings consistent with due process.

(d)(1) Applications, complaints, orders to show cause and answers thereto and similar formal documents upon which hearings are fixed shall, without further action, be considered as part of the record as pleadings.

(2) Such pleadings, or any part thereof, shall not be considered as evidence of any fact which is in dispute.

(e) Except as otherwise provided in 170 IAC 1-1.2, when exhibits of a documentary character are offered in evidence, copies shall be furnished to the presiding officer and to the participants present at the hearing, unless the presiding officer otherwise directs. Additional copies of exhibits of documentary character may be required to be furnished as the presiding officer may direct.

(f) An offer to prove may be requested when a ruling has been made holding that the witness was not competent to testify or that the evidence to be offered as *[sic.]* inadmissible. An offer to prove also may be made when the presiding officer has sustained an objection to the admission of tangible evidence. If the proper evidence is tangible, it shall be marked for identification purposes and shall constitute the offer to prove. If the proper evidence is oral testimony, the offer to prove shall consist of a summary of the evidence which counsel contends would be adduced by such testimony. The presiding officer may also request a statement of the basis for admissibility of such evidence. *(Department of State Revenue; 45 IAC 16-1.5-14; filed Oct 21, 1986, 10:37 am: 10 IR 389) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 1-1.2-14) to the Department of State Revenue (45 IAC 16-1.5-14) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-1.5-15 Post hearing briefs and proposed orders

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 15. (a) The presiding officer may require post hearing briefs or proposed orders, or both, to be filed by the parties. Where either or both are ordered to be filed, such briefs or proposed orders shall be filed simultaneously by all parties no later than fifteen (15) days following the closing of the evidentiary record unless otherwise provided by the presiding officer.

(b) Following the filing of all post hearing briefs and proposed orders, the presiding officer shall prepare a final order for consideration by the commission. *(Department of State Revenue; 45 IAC 16-1.5-15; filed Oct 21, 1986, 10:37 am: 10 IR 389) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 1-1.2-15) to the Department of State Revenue (45*

IAC 16-1.5-15) by P.L.72-1988, SECTION 12, effective July 1, 1988.

45 IAC 16-1.5-16 Post hearing relief

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 16. (a)(1) At any time after the record is closed, but before a final order is issued, any party to the proceeding may file a petition to reopen the proceeding for the purpose of taking additional evidence. A petition to reopen shall set forth clearly the facts claimed to constitute grounds requiring reopening of the proceeding, including material changes of fact or law alleged to have occurred since the conclusion of the hearing, shall show that such evidence will not be merely cumulative, and shall be verified or supported by affidavit.

(2) Within ten (10) days following the service of such petition to reopen upon all parties to the proceeding, any other party may file an answer to the petition.

(3) The presiding officer or the commission, before issuance of the presiding officer's decision and commission approval, and upon notice to the parties, may reopen the proceeding for the receipt of further evidence if there is reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of the proceeding.

(b)(1) Following a final order, any party to a proceeding may file a petition for rehearing and/or reconsideration within twenty (20) days of the entry of the final order. Such petition shall be concise, stating the specific grounds relied upon, with appropriate record references and specific requests for the findings or orders desired. If the petition seeks rehearing, it shall set forth the nature and purpose of the evidence to be introduced at rehearing, shall show that such evidence will not be merely cumulative and shall be verified or supported by affidavit.

(2) Petitions for rehearing and/or reconsideration shall be served upon all parties to the proceeding and the commission.

(3) Replies to such petitions shall be filed and served within ten (10) days after service of the petition.

(4) In response to such a petition, the presiding officer or the commission may reconsider the final order and uphold it without modification or correct errors by modifying or clarifying it without further hearing based upon the existing record, or may upon notice to the parties reopen the proceeding for the receipt of further evidence on particular issues. *(Department of State Revenue; 45 IAC 16-1.5-16; filed Oct 21, 1986, 10:37 am: 10 IR 389) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 1-1.2-16) to the Department of State Revenue (45 IAC 16-1.5-16) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-1.5-17 Dismissal of cases

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 17. (a) The commission may, in its discretion, dismiss any proceeding which has been pending upon the commission docket for six (6) months which is not currently set for hearing and upon which no action has been taken by any party.

(b) Prior to such dismissal, the commission shall notify all parties to the proceeding by certified mail of its intention to dismiss. Notice shall be served at least ten (10) days prior to the entry of dismissal. *(Department of State Revenue; 45 IAC 16-1.5-17; filed Oct 21, 1986, 10:37 am: 10 IR 390) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 1-1.2-17) to the Department of State Revenue (45 IAC 16-1.5-17) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-1.5-18 Effect of other rules

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 18. (a) Indiana statutes and rules of the Indiana Supreme Court governing civil practice and procedure shall apply in all cases not specifically provided for by 170 IAC 1-1.2.

(b) 170 IAC 1-1.2 shall be subject to any special rules, regulations, or orders of the commission in effect from time to time, under or pursuant to the provisions of any statute of the state of Indiana or the United States of America or of the regulations of any agency of the United States government. *(Department of State Revenue; 45 IAC 16-1.5-18; filed Oct 21, 1986, 10:37 am: 10 IR 390) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 1-1.2-18) to the Department of State Revenue (45 IAC 16-1.5-18) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

Rule 2. Construction and Filing of Passenger Fare Publications and Schedules; Express Tariffs and Time Tables

45 IAC 16-2-1 Publications must conform to regulations; definitions

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 1. All publications filed, on and after January 1, 1946, must conform with these regulations except as otherwise provided herein. Publications filed prior to January 1, 1946, which do not conform to these regulations shall be brought into conformity therewith on or before July 31, 1946.

The Commission may reject any publication which does not comply with these regulations. The Commission may, for reasons deemed sufficient, direct the re-issue of any publication, Power of Attorney, or concurrence.

The term "tariff" as used herein means a publication stating the fares and charges of a common carrier, and all rules which it applies in connection therewith.

The term "schedule" as used herein means a publication stating the minimum fares and charges of a contract carrier, and all rules which it applies in connection therewith.

The term "time table" as used herein means a publication stating the time of arrival and departure of buses. *(Department of State Revenue; No. 17686: Construction and Filing of Common Carrier Passenger Fares; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1741) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-2-1) to the Department of State Revenue (45 IAC 16-2-1) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-2-2 Common carrier tariffs; form; filing

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 2. Construction and Filing of Tariffs. (a) All tariffs and supplements thereto must be in book, pamphlet, or loose-leaf form of size 8 by 11 inches. They must be plainly printed, mimeographed, planographed, stereotyped, or reproduced by other similar durable process on paper of good quality.

No alteration in writing or erasure shall be made in any tariff or supplement thereto.

A margin of not less than five-eighths of an inch without any printing thereon must be allowed at the binding edge of each tariff and supplement.

(b) Except as provided in rule 4, and unless otherwise authorized by the Commission, all tariffs and supplements must be filed and posted at least 10 days prior to the effective date thereof.

(c) Issuing carriers or their agents shall transmit to the Commission three copies of each tariff, supplement, or revised page. All copies shall be included in one package accompanied by a letter of transmittal listing all tariffs enclosed and addressed to the Public Service Commission of Indiana, 401 State House, Indianapolis 4, Indiana. All postage, etc., must be prepaid. *(Department of State Revenue; No. 17686: Construction and Filing of Common Carrier Passenger Fares Sec 1,Rule 1; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1742) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-2-2) to the Department of State Revenue (45 IAC 16-2-2) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-2-3 Title page of tariff and supplement

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 3. Title Page of Every Tariff and Supplement Shall Show in the Order Named. (a) On upper right-hand corner each tariff shall be numbered beginning with No. 1. Such number shall be shown as follows:

PSCI No. B-_____

When tariffs are issued cancelling a tariff or tariffs previously filed the PSCI number or numbers of the tariff or tariffs cancelled must be shown in the upper right-hand corner immediately under the PSCI number of the new tariff.

Example:

PSCI No. B-2
Cancels

PSCI No. B-1

(b) Supplements to a tariff in addition to showing the PSCI number of the tariff amended thereby shall be numbered beginning with the number 1 and such information shall be shown in the upper right-hand corner. Supplements shall also show in the upper right-hand corner the number of any previous supplement cancelled thereby and also the numbers of the supplements containing all changes from the tariff.

Example:

Supplement No. 3
to
PSCI No. B-1
Cancels Supplement No. 2

Supplements Nos. 1 and 3 contain all changes

(c) Name of carrier or name of agent issuing tariff. Whenever two or more carriers join in a through fare or charge the names of all such carriers must be shown. The name of a carrier must be the same as that appearing in its application for a certificate. In the event of a successor its name must be shown as "Successor to_____" as follows:

Example:

John Doe and William Doe
(Successors to A.B.C. Transportation Co.)

If the carrier is not a corporation, and a trade name issued, the name of the individual or partners must precede the trade name.

Example:

John Doe and William Doe
doing business as
A.B.C. Transportation Co.

Whenever two or more carriers join in a through fare or charge, authority by means of proper power of attorney or concurrence, as provided in rule 15, must be given the agent or carrier publishing the tariff.

(d) A brief description of the territories in which, or points from and to or between which, the tariff applies briefly stated.

(e) Date of issue and date effective.

(f) Name, title and street address of officer or agent by whom tariff is issued. *(Department of State Revenue; No. 17686: Construction and Filing of Common Carrier Passenger Fares Sec 1,Rule 2; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1742) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-2-3) to the Department of State Revenue (45 IAC 16-2-3) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-2-4 Contents

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 4. Tariffs Shall Contain in the Order Named. (a) Table of contents, arranged in alphabetical order showing the number of the page on which each subject may be found. If a tariff contains so small a volume of matter that its title page or interior arrangement plainly discloses its contents, the table of contents may be omitted.

(b) Explanation of all abbreviations, symbols, and reference marks used in the tariff.

(c) Table of fares.–An explicit statement of the fares in cents or in dollars and cents, together with the names or description of the points from and to which they apply.

Tariffs containing tables of fares based on distances from point of origin to destination must show the mileages or indicate a definite method by which such mileages shall be determined.

(d) Carriers or their agents may not publish fares or charges which duplicate or conflict with fares or charges published by or for account of such carriers. *(Department of State Revenue; No. 17686: Construction and Filing of Common Carrier Passenger Fares Sec 1,Rule 3; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1744) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-2-4) to the Department of State Revenue (45 IAC 16-2-4) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-2-5 Round-trip excursion fares

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 5. Round-Trip Excursion Fares. (a) Fares for round-trip excursions may be established, without further notice, upon posting tariffs in advance in a public and conspicuous place where tickets for such round-trip excursions are to be sold, and filing three copies thereof with the Commission, as follows:

For a round-trip excursion limited to a designated period of not more than three days, including the first date any ticket to be sold under the tariff may be used for the going journey and the last date any ticket to be sold under the tariff may be used for the return journey, upon posting notice of one day;

For a round-trip excursion limited to a designated period of more than three days but not more than thirty days, including the first date any ticket to be sold under the tariff may be used for the going journey and the last date any ticket to be sold under the tariff may be used for the return journey, upon posting notice of three days;

For a series of round-trip excursions, such series covering a period not to exceed thirty days, including the first date any ticket to be sold under the tariff may be used for the going journey and the last date any ticket to be sold under the tariff may be used for the return journey, upon posting notice of three days as to the entire series.

(b) The term "round-trip excursion" as used in this rule *[this section]* means an excursion between points on the regularly operated route or routes of a common carrier, and is not intended to embrace so-called special or charter operations.

(c) No supplement may be issued to any tariff which is published under this rule *[this section]* except for the purpose of cancelling the tariff.

(d) Each tariff issued under this rule *[this section]* must bear on its title page the following notations:

Issued under the authority of Rule 4, Public Service Commission of Indiana, Indiana Order No._____.

(Department of State Revenue; No. 17686: Construction and Filing of Common Carrier Passenger Fares Sec 1,Rule 4; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1744) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-2-5) to the Department of State Revenue (45 IAC 16-2-5) by P.L.72-1988, SECTION 12, effective July 1, 1988.

45 IAC 16-2-6 Amendment, cancellation or withdrawal of tariffs

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 6. Tariff Changes. (a) Except as provided in rule 4 and unless otherwise authorized by the Commission, fares and charges which have been filed with the Commission must be allowed to become effective and remain in effect for a period of at least 10 days before being changed, cancelled, or withdrawn.

(b) All tariffs, supplements, and revised pages shall indicate changes from preceding issues by use of the following symbols:

● or (R) to denote reductions.

◆ or (A) to denote increases.

▲ or (C) to denote changes, the result of which is neither an increase nor a reduction.

The proper symbol must be shown directly in connection with each change. *(Department of State Revenue; No. 17686: Construction and Filing of Common Carrier Passenger Fares Sec 1,Rule 5; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1745) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-2-6) to the Department of State Revenue (45 IAC 16-2-6) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-2-7 Posting of tariffs and supplements

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 7. Posting Regulations. Each carrier must post and file at each of its stations or offices at which an exclusive agent is employed all of the tariffs or schedules applying from, or at, such station or office and must also post and file at its principal place of business all of its tariffs or schedules. All tariffs or schedules must be kept available for public inspection or examination at all reasonable times. *(Department of State Revenue; No. 17686: Construction and Filing of Common Carrier Passenger Fares Sec 1,Rule 6; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1746) NOTE: Transferred from the Indiana Utility Regulatory*

Commission (170 IAC 2-2-7) to the Department of State Revenue (45 IAC 16-2-7) by P.L.72-1988, SECTION 12, effective July 1, 1988.

45 IAC 16-2-8 Contract carrier tariffs; form, filing and posting

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 8. Construction and Filing of Schedules. All schedules of contract carriers of passengers must conform to the requirements set forth to govern the construction, filing, and posting of common carriers' tariffs and supplements in rules 1, 2, 3, 4, 5, and 6 of Section 1.

One copy of each contract shall accompany schedules filed, for the Commission's confidential file.

Wherever in such rules the words “tariff” or “tariffs” appear, substitute the words “schedule” or “schedules.” Wherever in such rules the words “fares or charges” appear, substitute the words “minimum fares or charges.”

Wherever in such rules there appears reference to “certificate” substitute the word “permit.” *(Department of State Revenue; No. 17686: Construction and Filing of Common Carrier Passenger Fares Sec 2,Rule 7; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1746) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-2-8) to the Department of State Revenue (45 IAC 16-2-8) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-2-9 Contract filed by mutual consent

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 9. Filing of Contracts. Section 18, of the Motor Vehicle Act, Chapter 222, of Acts 1941, provides that the filing of copies of contracts containing the minimum charges of contract carriers for the transportation of passengers/or property is permitted by consent of contracting parties. *(Department of State Revenue; No. 17686: Construction and Filing of Common Carrier Passenger Fares Sec 2,Rule 8; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1746) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-2-9) to the Department of State Revenue (45 IAC 16-2-9) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-2-10 Express tariffs and schedules; form, filing and posting

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 10. Construction, Filing, and posting of express tariffs and Schedules. (a) Tariffs and schedules of common and contract carriers of passengers containing rates and charges for the transportation of express or express classifications must conform to the requirements set forth to govern the construction, filing, and posting of common and contract carriers' passenger tariffs and schedules in rules 1, 2, 3, 5, 6, 7, and 8 of sections 1 and 2, subject to the modifications, exceptions, and additional requirements set forth in the following rules.

(b) Wherever in the above rules and in rules 14 and 15 of section 4 the words “fares or charges” appear, substitute the words “rates or charges.”

When express tariffs are published separately, substitute the abbreviation PSCI No. E_____ wherever there appears in the above rules and in rules 14 and 15 of section 4 the abbreviation PSCI No. B_____. (See also rule 13.) *(Department of State Revenue; No. 17686: Construction and Filing of Common Carrier Passenger Fares Sec 3,Rule 9; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1747) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-2-10) to the Department of State Revenue (45 IAC 16-2-10) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-2-11 Dimensions of publication

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 11. Size of Tariffs and Schedules. The size of tariffs may be either 8 by 11 or 9 1/2 by 11 1/2 inches. *(Department of State*

Revenue; No. 17686: Construction and Filing of Common Carrier Passenger Fares Sec 3,Rule 10; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1747) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-2-11) to the Department of State Revenue (45 IAC 16-2-11) by P.L.72-1988, SECTION 12, effective July 1, 1988.

45 IAC 16-2-12 Contents of publication

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 12. Tariffs and Schedules shall Contain. (a) Immediately following the table of contents, a complete index of all the commodities on which specific rates are named therein, together with reference to the page or items in which they are shown. No index need be shown in tariffs of less than five pages or if all the rates to each destination are alphabetically arranged by commodities.

(b) When a tariff names rates by classes, a classification of articles must be published in the tariff or in a separate tariff. When a classification is published in a separate tariff, reference must be made thereto on the title page of the rate tariff as follows:

Governed, except as otherwise provided herein, by the (here name) classification (show issuing agent), PSCI No. E_____(or PSCI No._____), supplements to or successive issues thereof.

All carriers shown as originating carriers in a rate tariff which is governed by a separate classification must be named as participating carriers in such separate classification.

(c) Table of rates.–All rates must be explicitly stated in cents or in dollars and cents per 100 pounds, per barrel, per package, per bundle, or other definable measure.

Where rates are stated in amounts per package or bundle, definite specifications of the packages or bundles must be shown.

(d) Carriers or their agents may not publish class or commodity express rates which duplicate or conflict with express rates published by or for account of such carriers. *(Department of State Revenue; No. 17686: Construction and Filing of Common Carrier Passenger Fares Sec 3,Rule 11; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1747) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-2-12) to the Department of State Revenue (45 IAC 16-2-12) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-2-13 Commodity rates

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 13. Commodity Rates. Commodity rates may be established on any commodity or commodities. *(Department of State Revenue; No. 17686: Construction and Filing of Common Carrier Passenger Fares Sec 3,Rule 12; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1748) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-2-13) to the Department of State Revenue (45 IAC 16-2-13) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-2-14 Express rates, charges and rules; publication

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 14. Express Rates, Charges and Rules. (a) Carriers of passengers by motor vehicle may publish the rates, charges, and rules covering the transportation of express in their tariffs or schedules containing passenger fares and charges, provided such express matter is included in a separate section of such tariff. When this is done it will not be necessary for such passenger carrier to publish a separate tariff covering express. However, both the PSCI No. B_____ and the PSCI No. E_____, must be shown.

(b) When passenger tariffs contain express rates, charges, and rules, five copies of such issues shall be transmitted to the Commission. *(Department of State Revenue; No. 17686: Construction and Filing of Common Carrier Passenger Fares Sec 3,Rule 13; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1748) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-2-14) to the Department of State Revenue (45 IAC 16-2-14) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-2-15 Changes in fares and charges; application for special permission

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 15. Application for Special Permission. (a) The Motor Vehicle Act, 1941, authorizes the Commission in its discretion and for good cause shown to permit changes in fares and charges on less than statutory notice, and also to permit departure from the Commission's regulations. The Commission will exercise this authority only in cases where actual emergency and real merit are shown. Desire to meet the fares and charges of a competing carrier that has given statutory notice of change in fares and charges will not of itself be regarded as good cause for permitting changes in fares and charges or other provisions on less than statutory notice. Clerical or typographical errors in tariffs constitute good cause for the exercise of this authority, but every application based thereon must plainly specify the error, together with a full statement of the attending circumstances and must be presented with reasonable promptness after issuance of the defective tariff, supplement or revised page.

(b) When a formal order of the Commission requires publication on a stated number of days' notice, a request addressed to the Tariff Bureau for authority to file on less notice will not be granted. In any such instance a petition for modification of the order should be filed on the formal docket.

(c) Applications for permission to establish fares, charges, rules, or other provision on less than statutory notice, or for waiver of the provisions of this tariff circular must be made by the carrier or agent that holds authority to file the proposed publication. If the application requests permission to make changes in joint tariffs, it must state that it is filed for and on behalf of all carriers parties to the proposed change.

(d) Two copies of applications (including amendments thereto and exhibits made a part thereof) shall be addressed to the Public Service Commission of Indiana, Room 401, State House, Indianapolis 4, Indiana.

Applications shall be made on paper 8 by 10 1/2 inches, and shall give all the information required by this rule together with any other pertinent facts. They shall be numbered consecutively and must bear the signature of the carrier or its agent or officer, specifying title.

(e) Applications shall show the following information:

(1) The proposed tariff provisions shall be set forth clearly and completely. An accompanying exhibit may be used if identified by letter, such as Exhibit A, and so referred to in the application. If the proposed provisions consist of fares or charges, all points of origin and destination must be shown or definitely indicated; if permission is sought to establish a rule, the exact wording of the proposed rule must be given.

(2) The application shall show the tariffs and PSCI No. B_____ numbers of the publications in which the proposed fares, charges, ratings, rules or other provisions will be published. If the publication is to be made in supplements to tariffs already referred to, this fact shall be shown.

(3) The application shall set forth the fares, charges, or tariff provisions which it is desired to change. Where the matter to be shown is voluminous or for other reasons difficult of presentation, it may be included in an accompanying exhibit, properly identified and referred to in the application. Reference shall be made by PSCI No. B_____ and supplement number to the tariffs or supplements in which fares, charges, or provisions to be superseded are published. If such provisions are published in numbered items or other units, reference shall be made thereto by number, or, if not so published, the pages of the publication on which the provisions appear shall be shown. The extent to which cancellation will be made must be definitely indicated.

(4) The application shall state the names of carriers known to maintain competitive fares, charges, classification ratings, or rules between the same points or points related thereto, together with the PSCI No. B_____ numbers of the tariffs and supplements thereto containing such provisions.

(5) The application shall state whether such carriers have been advised of the proposed fares, charges, classification ratings, or rules and whether they have been advised that it is proposed to establish such provisions on less than statutory notice. If competitive carriers have expressed their views in regard to the proposed provision, a brief statement of their views shall be given.

(6) The application shall state the special circumstances or unusual conditions which are relied upon as justifying the requested permission together with any related facts or circumstances which may aid the Commission in determining whether the statutory notice is sought, the petitioner shall state why the proposed provisions could not have been established upon 10 days' notice.

(f) If the authority granted by special permission is used, it must be used in its entirety and in the manner set forth in the order

of special permission. If it is not desired to use all of the authority granted and less or more extensive or different authority is desired, a new application complying with the provisions of this rule in all respects and referring to the previous permission must be filed. *(Department of State Revenue; No. 17686: Construction and Filing of Common Carrier Passenger Fares Sec 4,Rule 14; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1749) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-2-15) to the Department of State Revenue (45 IAC 16-2-15) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-2-16 Powers of attorney and concurrences; issuance; filing; cancellation

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 16. Powers of Attorney and Concurrences. (a) Whenever a carrier desires to give authority to an attorney and agent to issue and file tariffs and supplements thereto in its stead a power of attorney in the following form shall be used. Size 8 by 10 1/2 inches:

PSCI No. B_____
Cancels PSCI No. B_____
(Name of carrier),
(Post Office Address),
_____, 19_____.

Know all men by these presents:

That the (name of the carrier) has made, constituted, and appointed, and by these presents does make, constitute, and appoint (name of principal agent appointed) its true and lawful attorney and agent for the said carrier, and in its name, place and stead, (1) for it alone and (2) for it jointly with other carriers, to publish and file tariffs naming (here specify whether fares and charges and/or rules applying from, to, or at points on or via route or routes, or express classifications) as required of common carriers of passengers by the Motor Vehicle Act, 1941, and by regulations established by the Public Service Commission of Indiana, thereunder. (If the authority granted runs only to a specific tariff, so state and describe such issue as follows):
(Here give exact description of title page of tariff, including PSCI number and the name of series. When date of issue and/or effective date are determined such date or dates must be shown.)

And the said (name of carrier) does hereby give and grant unto its said attorney and agent full power and authority to do and perform all and every act and thing above specified as fully to all intents and purposes, as if the same were done and performed by the said carrier, hereby ratifying and confirming all that its said attorney and agent may lawfully do by virtue hereof, and assuming full responsibility for the acts and neglects of its said attorney and agent hereunder.

And further, that the (name of the carrier) has made, constituted, and appointed, and by these presents does make, constitute, and appoint as alternate (name of alternative agent appointed) its true and lawful attorney and agent, for said carrier and in its name, place, and stead, (1) for it alone and (2) for it jointly with other carriers in case and only in case of the death or disability of the said (here insert name of principal agent) to do and perform the same acts and exercise the same authority as hereinabove granted to (here insert name of agent first hereinabove named).

In witness whereof the said carrier has caused these presents to be signed in its name by its (here give title of person signing) at (name of city or town) in (name of county) State of (name of State) on this (date) day of (month), 19_____.

_____
(Name of carrier in full)
By_____
(Name and title of person signing)
Attested_____
(Witness)
(Corporate seal if any)

(b) Whenever a carrier desires to concur in tariffs issued and filed by another carrier or its agent a concurrence in the following form shall be issued in favor of such other carrier. Size 8 by 10 1/2 inches.

PSCI No. B_____.
Cancels PSCI No. B_____.
(Name of Carrier)
(Post Office Address)

_____, 19_____.
To Public Service Commission of Indiana,
Tariff Bureau,
401 State House,
Indianapolis 4, Indiana.

This is to certify that the (name of carrier) assents to and concurs in the publication and filing of any tariff or supplement thereto which (name of carrier to whom concurrence is given) or its agent may publish and file and in which this carrier is shown as a participating carrier and hereby makes itself a party thereto and bound thereby, insofar as such tariff or supplement contains (here specify whether fares or charges applying from, to or at points on or via its route or routes or express classifications), until this authority is revoked by formal notice of revocation filed with the Public Service Commission of Indiana and sent to the carrier to which this concurrence is given. (If the authority granted runs only to a specific tariff, so state and describe such issue as follows):

(Here give exact description of title page of tariff, including PSCI No. B_____and name of series. When date of issue and/or date effective are determined, such date or dates must be shown.)

_____
(Name of carrier in full)
By_____
(Name and title of person signing)
Attested_____
(Witness)
(Corporate seal if any.)

(c) The original of all powers of attorney and concurrences shall be filed with the Commission and a duplicate of the original sent to the agent or carrier in whose favor such document is issued.

(d) Whenever a carrier desires to cancel the authority granted an agent or another carrier by power of attorney or concurrence, this may be done by a letter addressed to the Commission revoking such authority on 60 days' notice. Copies of such notice must also be mailed to all interested parties. *(Department of State Revenue; No. 17686: Construction and Filing of Common Carrier Passenger Fares Sec 4,Rule 15; filed Jan 2, 1946, 10:00 am: Rules and Regs. 1947, p. 1751) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-2-16) to the Department of State Revenue (45 IAC 16-2-16) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-2-17 Time tables and supplements; form; filing (Repealed)

Sec. 17. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 16-2-18 Title page of time tables and supplements (Repealed)

Sec. 18. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 16-2-19 Contents (Repealed)

Sec. 19. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 16-2-20 Time table changes (Repealed)

Sec. 20. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

Rule 3. Motor Carrier Freight Tariffs and Classifications

45 IAC 16-3-1 Common carrier freight tariffs and classifications; compliance with regulations; reissuance of tariffs, powers of attorney or concurrences

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 1. COMMON CARRIER FREIGHT TARIFFS AND CLASSIFICATIONS. Except as otherwise provided herein, all tariffs and supplements thereto filed by common carriers of property by motor vehicle and agents on or after Jan. 1, 1973, unless otherwise authorized by special permission of the Commission, shall conform to these regulations.

The Commission may reject any tariff or supplement thereto which does not comply with these regulations.

The Commission may, for reasons deemed sufficient, direct the reissue of any tariff, power of attorney, or concurrence at any time. *(Department of State Revenue; No. 33034: Common Carrier Freight Tariffs and Classifications PT A; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 457) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-1) to the Department of State Revenue (45 IAC 16-3-1) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-2 Definitions

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 2. DEFINITIONS. (1) The term "Tariff" means a publication containing the rates, charges, classification ratings, rules, and regulations (or any of them) published for a common carrier, and it may be in the form of a rate tariff, classification of articles or commodities, or a tariff containing rules and regulations or incidental charges.

(2) The term "Local Rate" means a rate that applies over the lines or routes of one carrier only. "Local Tariffs" are those which contain local rates.

(3) The term "Joint Rate" means a rate that applies over the lines or routes of two or more carriers and that is made by arrangement or agreement between such carriers evidenced by concurrence or power of attorney. "Joint Tariffs" are those which contain joint rates.

(4) The term "Through Rate" means the total rate from point of origin to destination. It may be a local rate, a joint rate, or combination of separately established rates.

(5) The term "Commodity Rate" means a rate published to apply on a commodity or commodities which are specifically named or described in the tariff in which the rate is published or in a separate commodity list. "Commodity Tariffs" are those which contain commodity rates.

(6) The term "Classification" means a publication containing a list of articles or commodities and the class ratings to which they are assigned for the purpose of applying class rates, together with governing rules and regulations.

(7) The term "Class Rate" means a rate which applies on any one or more of various articles according to the class rating to which they are assigned in a classification or tariff of exceptions thereto or in the class rate tariff. "Class Tariffs" are those which contain class rates.

(8) The term "Regular Route Carrier" means one operating over a specified route between fixed termini, as set forth in the carrier's certificate.

(9) The term "Irregular Route Carrier" means one operating within a specified and defined territory, as set forth in the carrier's certificate, but not over specified route or routes between fixed termini. *(Department of State Revenue; No. 33034: Common Carrier Freight Tariffs and Classifications PT A, Definitions; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 458) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-2) to the Department of State Revenue (45 IAC 16-3-2) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-3 Form and preparation of tariffs and supplements

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 3. FORM AND PREPARATION OF TARIFFS. (a) Form and size of tariff. All tariffs and supplements thereto shall be in book, pamphlet, or loose-leaf form of size either 8 x 11 inches or 8 1/2 x 11 inches, and shall be plainly printed, planographed, stereotyped, or prepared by other similar durable process on paper of good quality. All tariffs and supplements thereto which are filed and posted shall be clearly legible. Typewritten or proof sheets shall not be used for filing or posting.

(b) Size of type. The type used shall be of size not less than 8 point bold or full face, except that 6 point bold or full face type may be used for explanation of reference marks and for column headings. No alteration in writing or erasure shall be made in any tariff or supplement thereto.

(c) Margin on binding edge. A margin of not less than five-eighths of an inch, without any printing thereon, shall be allowed

at the binding edge of each tariff or supplement thereto.

(d) Tables of rates to be ruled and spaced. When rates, rate basis numbers, numerals, or letters for other purposes are shown in tables, the tables shall be ruled from top to bottom. When not more than three figures or letters, including reference characters, are employed, the columns shall be not less than one-fourth of an inch in width with a correspondingly greater width when more than three figures or letters, including reference characters, are employed. Such tables shall not contain more than six horizontal lines without a break in the printed matter by a ruled line or at least one blank space across the page.

(e) Loose-leaf tariffs. Pages of loose-leaf tariffs shall be printed on thin paper of strong texture on one side only, must be consecutively numbered in the upper left-hand corner and designated as "Original Page 1", "Original Page 2", etc. Each page must show at the top of the page the name of the carrier or agent, the page number, and the P.S.C.I. number of the tariff. At the bottom of the page shall be shown, the date of issue, the effective date, and the name, title, and street address of the issuing carrier or agent. *(Department of State Revenue; No. 33034: Common Carrier Freight Tariffs and Classifications PT A,Rule 1; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 458) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-3) to the Department of State Revenue (45 IAC 16-3-3) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-4 Title page

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 4. TITLE PAGE. (a) Title page shall show. The top cover of every tariff or supplement shall consist of durable but flexible paper of sufficient weight and strength to withstand hard usage and shall be prepared as a title page containing the following information in the order named:

(1) P.S.C.I. numbers and cancellations. Each tariff shall have a title page which will show prominently on the upper right-hand corner a P.S.C.I. number and prefix TR. Numbers shall run consecutively beginning with the next consecutive number in the existing series or, if no tariffs shall have been issued previously, beginning with P.S.C.I. No. TR-1. Immediately under this number there shall be shown the P.S.C.I. number or numbers of the tariff or tariffs cancelled thereby. When cancellations are so numerous that it is inconvenient to show a list of the cancelled publications on the title page, it may be shown immediately preceding the table of contents, in which event a reference thereto shall be shown under the P.S.C.I. number on the title page.

(2) Name of carrier or name of agent. On the upper central portion of the title page shall be shown the name of the issuing carrier or agent. When an individual carrier or a partnership operates under a trade name, the individual name or names shall precede the trade name. The names of carriers shall each be followed by the carrier's certificate number. On agency publications, when the agent is a corporation, the name of the corporation shall be shown, but, when the agent is an individual the name of the association (if any) for whom the agent acts may also be shown. If this is done, the name of the agent shall be preceded by the name of the association in substantially the following form:

A.B.C. TARIFF BUREAU
John Doe, Agent

Only one such agent may be thus shown.

(3) Kind of tariff. There shall be shown a statement indicating whether the rates are: (i) local, (ii) joint, (iii) proportional, (iv) distance rates, or (v) a combination of any such rates, and (vi) whether class or commodity or both. When a tariff contains both distance rates and other rates a concise statement of the extent of the application of each kind of rates shall be given. If the tariff is a classification or if it contains rules or other governing provisions, this fact shall be shown.

(4) Territory. A brief but reasonably complete statement of the territory within which or the points from and to or between which the rates or other provisions apply shall be given.

(5) Governing tariffs. Reference to the item and page number of the tariff containing a statement of the publications governing the tariff in substantially the following form (this reference need not be shown on the title page of supplements):

For reference to governing classification, and other governing publications see Item No._____Page_____, or as amended.

(6) Effective and issued dates. (i) The date on which the rates or other provisions will become effective shall be shown on the lower right-hand side. (For exceptions, see Rule 10 and the following paragraph of this rule.) The date on which the publication is issued should be on the lower left-hand side.

(ii) Every publication which contains rates, rules, or other provisions effective upon a date different from the general effective date of such publication shall show on its title page a notation in substantially the following form:

Effective_____ 19_____ (except as otherwise provided herein) or (except as provided in Item_____) or (except as provided on Page_____).

(7) When issued by permission or order of Commission on less than statutory notice. On every tariff or supplement in which all rates, rules or regulations are made effective on less than 30 days' notice under authority of the Commission, a notation in substantially the following form shall be shown:

Issued on_____ days' notice under authority of_____ of the Public Service Commission,_____ No._____ date_____.

(8) Name of individual or agent issuing. (i) The name, title, and address of the person issuing the tariff shall be shown near the bottom of the title page except that when the tariff is issued by a corporation as publishing agent, the name and title of the official of such corporation who has been appointed by the corporation to handle all tariff matters with the Commission shall be shown at the bottom of the title page.

(ii) There may be shown if desired, the name and address of a joint agent, (if any) in substantially the following form:

Richard Roe, Agent	Issued by:
XYZ FREIGHT TARIFF BUREAU	John Doe, Agent
40 Central Avenue	101 Fifth Street
Indianapolis, Indiana	Washington, D.C.

(iii) Tariffs filed in the P.S.C.I. No. TR-series of individual carriers shall show in the lower left-hand corner the principal address of the carrier, where such address is different from that of the individual filing the tariff for such carrier.

(9) Expiration notice. (i) A provision in a tariff or supplement that the same, or any part thereof, will expire with a given date, is not a guaranty that the tariff, or supplement, or such part thereof, will remain in effect until and including that date. Such provision, if used, will be held to mean that the tariff or supplement, or specified part thereof, will expire with the date named, unless the date is changed on statutory notice, or under special permission of the Commission. In such tariffs and supplements the following notation shall be used to indicate the date upon which the publication will expire:

Expires with_____, unless sooner canceled, changed, or extended.

(ii) If the entire publication is to expire with the specified date, the notation shall be placed near the bottom of the title page. If only a portion of the published rates or other provisions will expire with the specified date, the notation shall be shown in connection with the particular item, rate, or other provision which will expire in such a way as to clearly indicate the matter affected thereby.

(Department of State Revenue; No. 33034: Common Carrier Freight Tariffs and Classifications PT A,Rule 2; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 459) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-4) to the Department of State Revenue (45 IAC 16-3-4) by P.L.72-1988, SECTION 12, effective July 1, 1988.

45 IAC 16-3-5 Contents

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 5. CONTENTS OF TARIFFS. Tariffs shall contain in the order named:

(a) Table of contents. A table of contents containing a full and complete statement, in alphabetical order, of the exact location where information under general headings, by subject, will be found, specifying page or item numbers. If a tariff contains so small a volume of matter that its title page or its interior arrangement plainly discloses its contents, the table of contents may be omitted.

(b) Participating carriers. (1) The individual names and firm names or (in the case of corporations) corporate names of participating carriers, with city and State in which their principal offices are located and certificate numbers, shall be shown alphabetically arranged together with the form and number of power of attorney or concurrence of each. If the carrier consists of an individual or individuals operating under a trade name, the trade name shall precede the name of the individual operator or names of partners (or the name of the individual operator or names of partners may precede the trade name, provided the trade name is shown in alphabetical sequence and in a prominent manner with the individual name or names shown above being indented). When reference to concurrences is shown in agency issues, there shall be included information indicating the carriers to whom such concurrences are given.

(2) Initial, intermediate, and terminal participation, may be indicated by any or all of the following reference marks, which must be explained on each page on which they are used: “X” to indicate carriers participating as initial lines; “Y” to indicate intermediate carriers; and “Z” to indicate terminal or delivering line. If there be not more than four participating carriers, they

may be shown on the title page.
(c) Index of commodities. (1) A complete index, alphabetically arranged, of all articles upon which commodity rates are named therein together with reference to each item (or Page) where a particular article is shown. When nouns are not sufficiently explicit, articles shall be indexed also under the names of descriptive adjectives. All of the entries relating to different kinds or species of the same commodity shall be grouped together. For example, "Paper, building; paper, printing; paper, wrapping."
(2) When articles are grouped together in one list under a generic heading as authorized in Rule 4(e), such generic name shall be shown in the index and opposite thereto shall be shown reference to each item (or Page) where the generic term is used. Each article in the generic list must be shown separately in its proper alphabetical order in the index together with reference to each item (or Page) where such article is shown by name, but when such article appears only in a generic list, reference to the item (or Pages) containing rates may be omitted, provided reference is given to the generic name as it appears in the index.
(3) If all of the commodity rates to each destination in a general commodity tariff or a combined class and commodity tariff are arranged in alphabetical order by commodities, the index of commodities may be omitted from the tariff.
(d) Index of points. (1) Indexes of points of origin and destination. Tariffs of regular route carriers which name specific point to point rates shall provide an alphabetical index of all points from which rates apply and a separate alphabetical index of all points to which rates apply and, when the tariff names rates for account of more than one carrier, the carrier or carriers serving such points. Where desirable the rate tariff may refer to a separate publication (not a rate tariff) for the name or names of carriers serving the points appearing in such rate tariff. When all or substantially all of the rates named in a tariff apply in both directions between the points shown therein, the points of origin and destination may be shown in one index. If there be not more than 12 points of origin or 12 points of destination, the names of such points may, if practicable, be shown in alphabetical order on the title page of the tariff, in which event the index of such points of origin or destination or both, as the case may be, may be omitted.
(2) If rates are shown in a tariff by rate bases or by named or numbered territorial groups, indexes of points of origin, and destination shall show the basis or group to which such point is assigned, except that, when reference is made to a separate publication as provided in Rule 14 for list of points in such groups, such points may be omitted from the indexes: Provided, That (1) there is shown in the table of contents the item or page giving reference by P.S.C.I. No. TR-number to the separate publication and (2) there is shown at beginning of the index of points (if the tariff contains any such index) P.S.C.I. No. TR- reference to the separate publication.
(3) If rates in a tariff are so arranged that grouping of points is by geographical arrangement, the alphabetical indexes of points of origin and of destination shall show index numbers corresponding to those assigned to the points in the rate tables and, unless the rate tables themselves indicate that all points shown therein are arranged in geographical order for the carriers shown, there shall be included also a geographical list of points or reference shall be made by P.S.C.I. No. TR-number to a separate publication filed in accordance with Rule 14 containing such a geographical list of points with corresponding index numbers. The index numbers shall follow the names of the points in the alphabetical index of points and shall precede the names of the points in the geographical list where tariffs contain such lists of points.
(4) If rates are published in numbered items, indexes of points shall show the numbers of items in which rates from or to such points appear, except that, if points are arranged in commodity items in alphabetical order or in numerical sequence by index numbers and such commodity items are referred to in the commodity index prescribed in paragraph (c) of this rule, such item numbers may be omitted from the indexes of points. When rates are not published in numbered items, indexes shall show the pages on which rates from or to such points will be found, as well as index numbers of the points, except that, when the points are arranged in rate tables in numerical sequence of index numbers, the page numbers may be omitted from the index. If points of origin or of destination are shown in the rate or rate basis tables in continuous alphabetical order throughout the tariff, no index of such points of origin or destination, as the case may be, will be required provided that, when the tariff names rates for more than one carrier, information be included showing the carrier or carriers serving the various points. When points are arranged in rate tables in alphabetical order and indexes of points of origin and destination are not included in the tariff, the table of contents shall refer to the pages on which the rate tables showing an alphabetical list of points are to be found.
(5) Tariffs of irregular route carriers are required to define clearly the territory within which such carriers operate or to contain reference to a separate publication (not a rate tariff) on file with this Commission and bearing a P.S.C.I. No. TR-number, similar to publications authorized in Rule 14, clearly defining such territory.
(e) Reference marks and abbreviations. (1) Explanation of symbols, reference marks, and abbreviations of technical terms

used in the tariff shall be shown. If the explanation of a reference mark or symbol does not appear on the page on which it is used, the particular page on which the character is used shall show where the explanation is given.

(2) The following symbols shall be used for the purposes indicated and shall not be used for any other purpose in any tariff:

● or (R) to denote reductions.

◆ or (A) to denote increases.

▲ or (C) to denote changes in wording which result in neither increases nor reductions in charges.

● to denote no change in rate. (See Rule 7(b).)

+ to denote intrastate application only.

□ to denote reissued matter. (See Rule 7(e).)

(f) Governing tariffs. (1) An item containing reference by name of the carrier or publishing agent and P.S.C.I. number to any separately published classification, tariff of classification exceptions, tariff of rules, or similar publication affecting the provisions of the tariff shall be shown in substantially the following form:

This tariff is governed, except as otherwise provided herein, by_____ Classification P.S.C.I. No._____ issued by_____, by exceptions thereto_____ P.S.C.I. No._____, issued by _____, by Rules Tariff, P.S.C.I. No._____, and by supplements to or subsequent issues of these publications.

(2) A rate tariff may not refer to another rate tariff for classification ratings, exceptions to the classification, rules, or other governing provisions.

(3) Exceptions to classification ratings or rules which apply only in connection with the rates published in a single tariff shall be included in the tariff to which they apply and shall be shown in a separate section under the heading "Exceptions to the Governing Classification" or "Exceptions to the Governing Classifications and Tariffs of Exceptions Thereto." Classification exceptions when published in a rate tariff are subject to the provisions of Rule 13(d).

(g) Explanatory statements. Such explanatory statements as may be necessary to remove all doubt as to the proper application of the rates and rules contained in the tariff. When rates are published for account of any carrier under authority of a concurrence or of a limited power of attorney, there shall be included in this section of the tariff an explicit statement clearly indicating to what extent the published rates apply for account of such carrier. Only such specific statements as are required to indicate the application with respect to particular carriers should be included in this section. General rules relating to the application of the rates should be published under Paragraph (h) of this rule *[this section]*.

(h) Rules governing the tariffs. (1) Rules and other provisions which govern the tariff. Under this head all of the rules or provisions stating conditions which in any way affect the rates named in the tariff shall be entered, except as otherwise provided in this section or in Paragraph (g) of this rule *[this section]*. A special rule affecting a particular item or rate must be specifically referred to in such item or in connection with such rate, except that provisions affecting more than one but not all of the rates contained in the tariff or applying to only a portion of the carriers for whom the rates are published may be included in the explanatory statements authorized in Paragraph (g) of this rule *[this section]* provided that reference is made thereto in such a way as to leave no doubt as to the application of the rates.

(2) Each rule or similar provisions should be given a separate number. Such rules or provisions may, if desired, be designated "Items" in which even numbers shall be in the same series as those of other items and amendment shall be made as provided in Rule 9(e).

(3) Except as provided in Rule 4(f), (k) and Rule 8, no rule or other provisions shall be included which in any way or in any terms authorizes substituting for any rate named in the tariff a rate found in any other tariff, or a rate made up by means of a combination of rates nor shall any rule be provided to the effect that traffic of any nature will be "Taken only by special agreement" or other provisions of like import.

(4) Where it is not desirable or practicable to include the governing rules and regulations in the rate tariff, such rules and regulations may be separately published in tariffs filed by a carrier or an agent, provided specific reference is made in the rate tariff to such separate publication in the manner set forth in Rule 13(f).

(5) Tariffs which contain rates for the transportation of explosives, inflammable or corrosive materials, or other dangerous articles shall also contain the rules and regulations promulgated by the Department of Transportation governing the transportation thereof, or must bear specific reference to the P.S.C.I. number of the separate publication which contains such rules and regulations. (See Rule 13(f), (g).)

(i) Rates. A statement of rates applicable for transportation of the articles or class of articles on which rates are named therein, arranged as set forth in Rule 4.

(j) Routes. A clear and explicit statement of routes over which the published rates apply prepared in accordance with the

provisions of Rule 5.

(k) Operating authority. Tariffs must contain only rates, charges, and related provisions that cover services in strict conformity with each carrier's operating authority. No provision may be published in tariffs, supplements, or revised pages which results in restricting service to less than the carrier's full operating authority or which exceed such authority. Tariff publications containing such provisions are subject to rejection or suspension for investigation.

(Department of State Revenue; No. 33034: Common Carrier Freight Tariffs and Classifications PT A,Rule 3; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 461) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-5) to the Department of State Revenue (45 IAC 16-3-5) by P.L.72-1988, SECTION 12, effective July 1, 1988.

45 IAC 16-3-6 Statement of rates

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 6. STATEMENT OF RATES. (a) Explicit statement. (1) All rates shall be clearly and explicitly stated in cents or in dollars and cents (lawful money of the United States), per 100 pounds, per ton of 2,000 pounds, per ton of 2,240 pounds, per stated truckload, or other defined unit, except unit of time (however, charges for terminal and special services (see Rule 11(a) may be published in cents or dollars and cents per unit of time), together with the names or other proper designation of the places from and to which they apply. If all rates in a tariff are stated in the same unit, the fact may be indicated on the title page in connection with the application of the tariff.

(2) It must be clearly shown whether the named rates apply from, to, or between the named points and all rates must be arranged in a simple and systematic manner. Complicated plans or ambiguous terms must not be used. Insofar as possible such rates should be subdivided into small sections (by Items, index numbers or similar methods) to each of which should be assigned an identifying number to facilitate reference thereto.

(3) Where rates are stated in amounts per package, definite specifications showing size, capacity, or weight of the packages on which such rates apply must be shown or reference must be made by P.S.C.I. number to a publication, on file with this Commission, containing such specifications.

(b) Arbitraries or differentials. A tariff may provide rates from or to designated points by the addition or deduction of arbitraries or differentials from or to rates shown therein from or to base points, but provision for the addition or deduction of arbitraries or differentials shall be shown either in connection with the base rate or in a separate item which must specifically name the base point and clearly and definitely state the manner in which such arbitraries or differentials shall be applied.

(c) Percentages of class rates. When articles are made subject to percentages of class rates (for example, 110 percent of first class 83 1/3 percent of fifth class, etc.), whether in a tariff of rates, a classification, or exceptions thereto, the rates applicable under such provisions must be shown in the class tariffs just as if those percentages were additional numbered or lettered classes, or reference must be made to an appropriate table, published in the tariff containing the class rates or in a governing publication which will show in one column the class rates and in succeeding columns the actual rates representing the various specified percentages of class rates. Unless one of these methods is used, specific commodity rates must be published.

(d) Minimum quantities. When truckload or volume commodity rates are published, the minimum quantities on which the rates apply shall be specifically stated in the tariff naming the commodity rates, except as provided in paragraph (e) of this rule. When rates on mixed truckload or quantity shipments of two or more articles are published, the tariff shall show the minima on which the rates apply, and if the various articles are not made subject to the same rate, or if different minima are provided for different articles, the tariff shall show how the minimum charge per shipment shall be determined.

(e) Grouping of articles under generic head. (1) A commodity item may, by use of a generic term, provide rates on a number of articles without naming such articles, provided such commodity item contains reference to an item (not a rate item) in the tariff which contains a complete list of such articles, or contains reference to the P.S.C.I. number of a separate tariff (not a rate tariff) containing such a list of articles. Example: “Packing-house products, as described under heading `Packing-house products', as described in Item_____, or successive issues thereof,” or “Packing-house products, as described under heading `Packing-house products' in P.S.C.I. No._____, supplements thereto or successive issues thereof.” Such reference to a separate item or tariff may not be made unless a definite and complete list of the articles under the same generic term is shown in the item or tariff to which reference is thus made.

(2) A separate tariff, not containing rates, may be filed by a carrier or an agent, showing lists of the commodities and minimum quantities, on which rates published by reference to generic terms will apply and rate tariffs may be made subject thereto as provided

above. The title page of such separate publication shall contain the following: (i) In large type the words, "List of commodities upon which the rates are provided in tariffs making reference hereto," and (ii) in smaller type, "This tariff may be used only in connection with tariffs making specific reference hereto by P.S.C.I. number." In the separate publication, the generic terms shown must be the same as those used in the tariffs making reference thereto and under each heading the different commodities shall be alphabetically arranged. Except as provided in Rule 13(e), a separate publication issued for the purpose of publishing generic lists shall contain no information other than that authorized in this rule. Only one such publication may be in effect at any time in a carrier's or agent's file and it shall list only generic terms which refer to 10 or more commodities, otherwise the tariff of rates shall specify each commodity upon which the rates therein apply. A tariff of rates may not refer to another tariff of rates for lists of commodities.

(f) Commodity rates must be specific. (1) When commodity rates are established, the description of the commodity must be specific and the rates thereon may not be applied to analogous articles. As far as possible uniform commodity descriptions should be used in all tariffs.

(2) If a commodity rate (distance or otherwise) is published, such commodity rate, except as otherwise provided in these rules, is the applicable rate and the only rate that may be applied from and to the same points over the route or routes over which the commodity rate applies, even though a class rate (except as provided in subparagraphs (5) of this paragraph, paragraph (k) of this rule *[this section]* and in Rule 8) may make a lower charge.

(3) Different rates based on different minimum quantities may be published, provided the lowest charge resulting from any such rate applied in connection with its published minimum (or actual quantity shipped, if greater) is made applicable by publishing such rates in the same item or in different columns on the same page and by providing in connection with such items or rate columns a rule to the effect that the lowest charge obtainable under the different rates and minima applicable thereto (or actual quantities, if greater) will be applied.

(4) Commodity rates may be established on different articles for mixed truckload or mixed quantity shipments. Minimum quantities shall be specified together with a statement in connection with the commodity description that the rates apply in mixed truckload or mixed quantity shipments. Such rates may also be made applicable upon straight shipments of one or more or all of the articles by a provision to that effect in connection with the commodity description. When more than one article is included in an item or commodity description the tariff shall specifically state whether or not the rates apply on straight or mixed shipments.

(5) When because of differences in minimum weights, package requirements, mixed quantity provisions, or other conditions the charges accruing under commodity rates result in higher charges than those accruing under the class rates published in other tariffs, provision may be made in a tariff containing commodity rates only, for the alternation of such rates with class rates published in not more than three other tariffs, provided that the commodity tariff contains specific reference to the P.S.C.I. number or numbers of the class tariffs and shows in connection with each P.S.C.I. number a complete description of the origin and destination territory shown in that tariff. The following notation must be shown in the commodity tariff under the application of rates:

> If the charges accruing under the class rates published in the following tariffs, including supplements to or successive issues thereof, from and to the same points via the same routes are lower than the charges accruing under the commodity rates published in this tariff, the lower charges resulting from such class rates will apply. (Here show P.S.C.I. numbers of the class tariffs and the required description of each.)

(6) If a commodity tariff contains only a few rates which result in higher charges than would accrue under the class rates, the reference to the class tariffs prescribed herein should be shown immediately in connection with such commodity rates or may be shown in a separate item shown under an appropriate heading and reference to such item shown immediately in connection with the commodity rates.

(7) Great care should be exercised in describing the scope of the class tariffs in order that users of the commodity tariff may determine without examining the class tariffs, which of such class tariffs is to be used in connection with any commodity rate. It also should be understood that the alternative application of commodity rates in one tariff with class rates in another tariff should be resorted to only where there is real necessity therefor, and that wherever possible the commodity rates should be revised so that they will not exceed the class rates between the same points.

(8) The continuance of the authority to alternate rates in a commodity tariff with class rates in not more than three other tariffs as contained in the subparagraphs (5), (6), and (7) of this paragraph will depend upon the progress made by carriers in revising commodity rates in order to avoid unnecessary alternations, and upon the accuracy used in describing the class rate tariffs.

(g) Tariff must contain all rates on same commodities. (1) A tariff naming rates on a single commodity or a group of related commodities shall contain all of the commodity rates (other than distance or mileage rates; however, such tariffs may contain distance or mileage rates) on the same commodity or commodities published to apply for the same carriers from and to points in the same origin and destination territory except that, when only local commodity rates are named in a tariff published by or for a

carrier, that carrier may also participate in tariffs of other carriers naming rates from or to points on the line of the issuing carrier and may participate in not more than one agency issue naming rates on the same commodity or commodities between points or over routes not covered by carrier's issues.

(2) A general commodity tariff or a combined class and commodity tariff shall contain reference to any other tariffs published by the same carrier or agent in which rates on other commodities are published from any point of origin to any point of destination named therein over the same route. Such reference shall include the P.S.C.I. number or numbers of such other tariff or tariffs with a description of the commodities and territory or points of origin and of destination. The reference shall be shown in a separate list arranged alphabetically by commodities immediately following the table of contents. For example: "For rates on textiles from_____ to _____, see P.S.C.I. No. _____ of _____, Agent."

(h) Conflicting or duplicating rates prohibited. The publication of class or commodity rates which duplicate or conflict with the rates published in the same or any other tariff over the same route is not permissible, and except as otherwise authorized in these rules, the publication of a statement in a tariff to the effect that the rates published therein take precedence over the rates published in some other tariff, or that the rates published in some other tariff take precedence over or alternate with the rates published therein, is hereby prohibited.

(i) Through rate applies. When a carrier or carriers establish a local or joint rate for application over any route from point of origin to destination such rate is the applicable rate of such carrier or carriers over the authorized route, notwithstanding that it may be higher than the aggregate of intermediate rates over such route.

(j) NOT USED.

(k) Intermediate application of rates. (1) Tariffs containing rates of regular route carriers may provide for the application of class or commodity rates from or to intermediate points on the lines of such carriers by incorporating in such tariffs the rule or rules set forth below, or in paragraph (m) of this section, subject to the limitations contained herein. An intermediate point rule may not be published which will result in establishing from or to an intermediate point a joint rate from or to a more distant point unless the tariff naming the rate from or to the more distant point contains specific routing instructions or refers to a routing guide containing such routing instructions. (See Rule 5.)

(2) The wording of the rules shall not be varied. Tariffs may, however, by appropriate provision published in connection with any of such rules, provide that it will apply only in connection with the rates or routes making reference thereto, or may provide for nonapplication of any such rule to particular rates or routes.

(3) The rules applicable in connection with commodity rates shall read as follows:

(i) Commodity rates applicable from intermediate points. When any point of origin is not provided in this tariff with a commodity rate on a given article to a particular destination over a particular route, and such origin is between the considered destination and a point from which a commodity rate on the article is published herein over the same route to such destination, apply on such article the commodity rate from the next more-distant point from which a commodity rate is named thereon over the considered route through the intermediate point, except as provided in Notes 1, 2, 3 and 4.

NOTE 1: When, by reason of branch or diverging routes, there are more than one more-distant points from which commodity rates on the article to the considered destination are named herein, apply the rate from the more distant point which on that article to the same destination over the same route results in the lowest charge.

NOTE 2: If the intermediate point is located between two points from which commodity rates on the same article are published in this tariff to the same destination over the same route, apply that one of such rates which results in the higher charge. If due to branch or diverging routes, there are two or more next more distant points in the same direction, only that one of such points from which the lowest charge results will be considered in applying the provisions of this note.

NOTE 3: If the class rate on the same article to the same destination over the same route from the intermediate point produces a lower charge than would result from applying the commodity rate under this section, such commodity rate will not apply.

NOTE 4: If there is in any other tariff a commodity rate (not made by use of an intermediate point rule) published for account of the same carrier or carriers on the same article from the considered intermediate point, applicable to the same destination over the same route, the provisions of this section will not be applied from such intermediate point.

(ii) Commodity rates applicable to intermediate points. When any point of destination is not provided in this tariff with a commodity rate on a given article from a particular origin over a particular route and such destination is between the considered origin and a point to which a commodity rate on the article is published herein over the same route from such origin, apply on such article the commodity rate to the next more distant point to which a commodity rate is named thereon over the considered route through the intermediate point, except as provided in Notes 1, 2, 3 and 4.

NOTE 1: When by reason of branch or diverging routes, there are more than one more distant points to which commodity

rates on the article from the considered origin are named herein, apply the rate to the more distant point which on that article from the same origin over the same route results in the lowest charge.

NOTE 2: If the intermediate point is located between two points to which commodity rates on the same article are published in this tariff from the same origin over the same route, apply that one of such rates which results in the higher charge. If, due to branch or diverging routes, there are two or more next more distant points in the same direction, only that one of such points to which the lowest charge results will be considered in applying the provisions of this note.

NOTE 3: If the class rate on the same article from the same origin over the same route to the intermediate point produces a lower charge than would result from applying the commodity rate under this rule, such commodity rate will not apply.

NOTE 4: If there is any other tariff a commodity rate (not made by use of an intermediate point rule) published for account of the same carrier or carriers on the same article to the considered intermediate point, applicable from the same origin over the same route, the provisions of this section will not be applied to such intermediate point.

(l) NOT USED.

(m) Class rates from and to intermediate points. (1) Class rates should be provided between practically all points and there appears little occasion for the employment of intermediate point rules in connection with class rates except for the purpose of establishing rates from and to new points. For this purpose only the following clause may be shown in tariffs for use in connection with class rates.

(2) The rule applicable in connection with class rates shall read as follows:

(i) Class rates from and to intermediate points. From or to any point not named in this tariff which is intermediate to a point from or to which class rates are published herein through such unnamed point, the class rate published herein over the same route from or to the next more distant point will be applied.

(n) "From" and "to" rules may apply in connection with the same rate. When the rules providing application "from" and "to" intermediate points are both shown in connection with any class or commodity rate, they establish class or commodity rates from intermediate points of origin to intermediate points of destination on such classes or commodities. Unless otherwise provided in the tariff, intermediate application rules establish rates from or to intermediate points on the routes of carriers parties to the tariff without regard to the concurrence forms and numbers under authority of which carriers are shown as participating carriers. *(Department of State Revenue; No. 33034: Common Carrier Freight Tariffs and Classifications PT A,Rule 4; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 465) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-6) to the Department of State Revenue (45 IAC 16-3-6) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-7 Routing guide

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 7. ROUTING. (a) Routing to be specified. (1) All tariffs containing joint rates shall specify routing over which such rates apply, stated in such manner that such routes may be definitely ascertained. This must be accomplished, insofar as may be practicable, by providing that the rates in the tariff apply only over the routes specifically shown therein.

(2) Subparagraph (1) of this paragraph has reference to the names of carriers and transfer points via which such joint rates apply, and does not mean that highway numbers must be shown.

(b) Routing guide. (1) Instead of showing in rate tariffs the routes over which rates apply, such routes may be published in a separate publication (or publications) filed with this Commission either by a carrier or by an agent, provided specific P.S.C.I. reference be made in the rate tariff to such publication. Such a separate publication may be designated as a "Routing Guide" and may be used only in accordance with the provisions of the following subparagraphs of this paragraph.

(2) When it is desired to refer to a routing guide or guides for all of the routes, the following notation shall be used:

The rates herein apply only over the routes of the carriers parties to this tariff specified in P.S.C.I. No. TR-_____, supplements thereto or successive issues thereof.

(3) When it is desired to refer to a routing guide or guides for routes in connection with some but not all of the rates in a tariff, or for routes for account of some but not all of the carriers parties to the tariff, an appropriate notation shall be used. When it is desired to provide that certain rates published in a tariff will not apply over all the routes shown in a routing guide to which the rate tariff is made subject, the rate tariff shall show clearly what routes in the routing guide are not applicable, or are the only routes applicable, as the case may be, in connection with such rates.

(4) When a tariff which refers to a routing guide also shows routes, it shall show clearly whether the routes named therein

are in addition to the routes shown in the routing guide or are the only routes over which the rates making reference to such routes will apply. No one rate may be made subject to more than one routing guide for account of any initial carrier except that interterritorial rates may be made subject to one guide for each of such territories in which such guide is published for that territory alone.

(c) Form of routing guide. (1) A routing guide shall contain three sections containing (i) an alphabetical list of all of the points from and to which routes are provided, with the name of the carrier serving each point, together with an index number for each of such points; (ii) a table indicating the points from which routes apply, the points to which routes apply (or between which routes apply), and the numbers assigned in the routing guide to routes provided from and to (or between) such points; and (iii) a table containing all such route numbers in numerical order with a full explanation thereof together with names of the interchange (transfer) points.

(2) The names of the points from, to, or between which routes are provided shall be shown in Section 2, arranged in geographical order by carriers, unless names of points arranged in geographical lists by carriers, are included in Section 1 of the guide.

(d) Application of routing guide. (1) A routing guide must be concurred in by all carriers over whose lines routes are provided therein. Such guides shall not contain exceptions to the routes provided therein. All exceptions thereto, if any, shall be published in the tariffs making reference thereto.

(2) Routing guides shall show on their title pages the following notation:

The routes provided herein may be used only in connection with rates made subject thereto by specific P.S.C.I. reference to this guide in the tariffs containing such rates. Its use in connection with any tariff is restricted to the carriers and to the application provided in such tariff.

(3) If desired, the following tariff provision may be incorporated under the heading "Routing Instructions" in rate tariffs:

The rates named in this tariff will apply only over the routes and through transfer points authorized herein except that when in the case of pronounced traffic congestion (not an embargo), detours or other similar emergency, or through carriers' error, carriers forward shipments by other transfer points of the same carriers or over the lines of other carriers parties to the tariff, the rate specified in this tariff (but not higher than the rate applicable over the actual route of movement) will be applied.

NOTE: If desired, the words "or over the lines of other carriers parties to the tariff" may be omitted from the emergency routing clause. *(Department of State Revenue; No. 33034: Common Carrier Freight Tariffs and Classifications PT A,Rule 5; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 471) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-7) to the Department of State Revenue (45 IAC 16-3-7) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-8 Supplements

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 8. SUPPLEMENTS. (a) Amendments and supplements. (1) When it is desired to make changes in the rates, ratings, rules, or other provisions of a tariff, other than a looseleaf tariff, this may, except as provided in paragraph (d) of this rule *[this section]*, be accomplished by issuing a supplement to the tariff constructed generally in the same manner as is the tariff which it supplements (a supplement must be the same size in length and width as the tariff it amends. See Rule 1(a)).

(2) The first supplement to a tariff shall be designated on the upper right-hand corner of the title page as follows:

Supplement No. 1
to
P.S.C.I. No. TR-_____

(3) Subsequent supplements shall be numbered consecutively in like manner. Each supplement shall specify on its title page, immediately under the supplement number and P.S.C.I. number of the tariff supplemented, the publications which the supplement cancels, and shall also specify the supplements that are in effect. The statement that the supplement cancels conflicting portions of the tariff or prior supplements shall not be used; cancellations must be specific.

(4) The matter contained in each supplement shall be arranged in the same general manner and order as in the tariff which it amends and when points in a tariff are given index numbers the same index number must be assigned to the same point in all supplements to the tariff.

(b) Participating carriers; how shown in supplement. (1) A supplement shall contain either a list of carriers participating in the tariff as amended or shall state that the list of participating carriers is "as shown in tariff," or "as shown in tariff and effective

supplements," to which may be added "except (here show corrections in additions to, or eliminations from the original list that are effected by that supplement)." Changes in or additions to the list of participating carriers in the tariff or previous supplements shall be listed alphabetically as provided in Rule 3(b).

(2) When a participating carrier is eliminated by supplement, such supplement must also provide for cancellation of rates in connection with that carrier. This cancellation of rates should be accomplished by amending the individual items or provisions affected or by the publication of a blanket cancellation notice specifically indicating that all rates in the tariff applying for account of the carrier are cancelled.

(c) Index to supplement. (1) A supplement of 5 or more pages must be properly indexed, and a supplement of more than 23 pages must also contain a table of contents. In view of the provision of Rule 9(e) which requires that cancellation in a supplement of a numbered item must be made under the same item number as is given to that item in the tariff, and the requirement of paragraph (a) of this rule, which provides that the index number assigned to a point in a supplement must be the number assigned to that point in the tariff, the table of contents and indexes in a supplement of 5 or more pages need not contain entries which are shown in the table of contents or indexes in the tariff, provided that, in connection with the index of points of origin (or destination) the following notation shall be shown:

The index numbers of points in this supplement correspond with the index numbers of the same points shown on pages_____ to_____, inclusive, of the tariff, with the following additions and exceptions.

(2) The table of contents to such a supplement may be omitted if Rule 3(a) does not require the tariff to which the supplement is issued to contain a table of contents.

(d) Number of supplements effective at any time. (1) Except as otherwise authorized in these rules, tariffs of 4 pages or less may have no supplement; not more than 1 supplement may be in effect at any time to a tariff containing 5 and not more than 16 pages; not more than 2 supplements may be in effect at any time to a tariff containing 17 and not more than 80 pages; not more than 3 supplements may be in effect at any time to a tariff containing 81 and not more than 200 pages; and not more than 4 supplements may be in effect at any time to a tariff containing more than 200 pages.

(2) Except as otherwise authorized in these rules, tariffs containing 5 and not more than 12 pages may have not more than 4 pages of supplemental matter, and tariffs containing more than 12 pages may have supplemental matter aggregating not more than 33 1/3 percent of the number of pages in the tariff except that if the number of pages in the supplement which brings the volume of matter up to that authorized by this paragraph is not evenly divisible by 4, it may exceed the volume authorized to the extent necessary to bring the number of pages of such supplement to the next multiple of 4. The smallest of 3 effective supplements to a tariff of more than 80 but not more than 200 pages shall contain not more than 8 pages, and the smallest of 4 effective supplements to a tariff of more than 200 pages shall contain not more than 16 pages.

(e) Additional supplement to establish rates, under rule or order of Commission. (1) Except in the case of loose-leaf tariffs and tariffs containing less than 13 pages, one additional supplement may be issued to any tariff without regard to the requirements of paragraph (d) of this rule *[this section]* for the purpose of establishing rates, classifications, rules and other provisions in compliance with a decision or order of the Commission in a formal case. Only one such supplement may be in effect at any time and may contain no other matter.

(2) If the volume of supplemental matter is not exceeded by the issuance of such additional supplement it shall bear on its title page the following notation in addition to showing reference to the opinion, or order, as the case may be:

This supplement is issued under authority of Rule 6(e), of these regulations, and will be included in and cancelled by the next regular supplement filed to this tariff.

(3) The next regular supplement filed shall bring the number of effective supplements within the requirements of paragraph (d) of this rule.

(4) If the volume of supplemental matter is exceeded by the issuance of the additional supplement authorized by this section, the next regular supplement filed shall bring the volume of supplemental matter with the requirements of paragraph (d) of this rule *[this section]*, and, further, the volume of supplemental matter shall be brought within the requirements of that paragraph by the issuance of a new supplement filed within 120 days from the effective date of the additional supplement, or a new issue of the tariff shall be filed within that period.

(5) Such additional supplement, in addition to showing reference to the opinion or order as the case may be, shall bear on its title page a notation in substantially the following form:

This supplement is issued under authority of Rule 6(e). It will be cancelled by a new supplement or the tariff will be reissued, the new supplement or tariff to be filed on or before (here name a date which will observe the period of time provided above).

(f) Supplement to tariff that is filed and not yet effective. (1) In an instance where a tariff is filed on statutory notice cancelling

another tariff and it is desired to issue a supplement to the tariff to be cancelled, effective prior to the effective date of the new tariff, a supplement may be issued which makes the same changes in or additions to both tariffs and which is indicated as a supplement to both the tariff to be cancelled and the cancelling tariff (being given supplement numbers running in proper sequence to both P.S.C.I. numbers). In other words, such a supplement shall be numbered and treated as a supplement both to the old and new tariffs and shall be filed and posted as such. The matter contained in such a supplement shall be confined to additions or to changes in rates or provisions which were brought forward in the new tariff without change. It is not required that the provisions of paragraph (d) of this rule *[this section]* be observed in connection with such a supplement to the old tariff, but only one such supplement may be in effect at any time.

(2) If the matter to be changed is not arranged or numbered in the same way in both tariffs the changed provision shall be shown in the proper manner to indicate the change made in the old tariff and also to indicate the change in the new tariff. For example, if the changed provision is indicated as Item 40-B in the old tariff and as Item 50 in the new tariff, the amended provision shall be shown as follows:

Item 40-C Cancels Item 40-B of P.S.C.I. NO. TR-_____.

Item 50-A Cancels Item 50 of P.S.C.I. NO. TR-_____.

(3) Rates or other provisions may be changed upon lawful notice by supplement effective on or after the general effective date of the tariff supplemented, provided the matter amended has been in effect for 30 days or more either in the supplemented issue or in a former issue. Where such matter was in effect in a former issue, a notation in connection with the revised matter, shall show that it has been in effect 30 days or more. Example: "Item 40-A Cancels Item 40. Item 40 effective _____, brought forward without change from Item No. _____ of P.S.C.I. No. TR-_____ (former issue)." Rates or provisions which effect changes in rates or provisions not contained in either the former tariff or a reissue thereof may be established upon lawful notice by supplement to such new tariff, effective not earlier than the general effective date of the tariff, by showing in the following manner, in connection with the new rates or provisions that the rates or provisions previously applicable have been in effect 30 days or more in a different issue. Example: "Addition. Changes class rates which became effective _____ in P.S.C.I. No. TR-_____." Unless the provisions of this paragraph are complied with no supplement to a tariff that has been filed and has not become effective may be issued to become effective within 30 days from the effective date of the tariff without special permission.

(4) This rule does not waive the requirements of Rule 18. *(Department of State Revenue; No. 33034: Common Carrier Freight Tariffs and Classifications PT A,Rule 6; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 473) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-8) to the Department of State Revenue (45 IAC 16-3-8) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-9 Amendments

Authority: IC 8-2.1-18-6

Affected: IC 8-2.1-18

Sec. 9. AMENDMENTS. (a) How made. (1) Any change in or addition to a tariff shall be known as an amendment. Amendment of a bound tariff shall be made by reissue of the tariff or by issue of a supplement as provided in Rule 6. Amendment of a loose-leaf tariff shall be made by reissue of the tariff or of a page or pages as provided in paragraph (f) of this rule. (See also Rule 10(g) and Rule 17.)

(2) When an amendment is made in a numbered item or other unit in a supplement, such item or other unit shall be published in the supplement in its entirety as amended. When rates or other provisions are published in numbered items, cancellation shall be made as prescribed in Rule 9(e). When rates or rules are published in numbered units other than items, the supplement changing the rates or other provisions shall specifically provide for the cancellation of such matter by reference to the page of the tariff and number of the rule or other unit which it cancels. Numbered units other than items shall not be given suffix letters when amended. When such a change is made in matter previously published in a supplement in a numbered unit other than an item, the new supplement shall also give reference by number to the previous supplement.

(3) In any instance where matter is not published in a numbered unit, the changed provision shall be published in the supplement in its entirety and reference shall be made to the page or pages of the tariff on which the matter to be cancelled is shown clearly indicating the matter which is cancelled. If the matter to be amended has been amended by a previous supplement, specific cancellation shall be made of the corresponding matter in the "tariff as amended" and specific reference shall be made by number to the page or pages of the previous supplement containing the matter to be changed, and, when corresponding matter originally was effective in the tariff, to the page or pages of the tariff formerly containing the matter amended.

(b) Changes indicated. (1) All tariff publications shall indicate changes made in existing rates, charges, classifications, rules or other provisions by use of the following uniform symbols in connection with such change:

● or (R) to denote reductions.

◆ or (A) to denote increases.

▲ or (C) to denote changes in wording which result in neither increases nor reductions in charges.

(2) Explanation of such symbols shall be provided (see Rule 3(e)) in the publication in which they are used, and these symbols shall not be used for any other purpose.

(3) When a change of the same character is made in all or in substantially all rates in a tariff or supplement, or a page thereof, that fact and the nature of such change may be indicated in distinctive type at the top of the title page of such issue, or at the top of each page as the case may be, in the following manner: "All rates in this issue are increases"; or "All rates on this page are reductions"; or there may be added, when appropriate, "except as otherwise provided in connection with particular rates." In complying with this paragraph a bold-faced dot "●" shall be used to symbolize a rate or other provision in which no change has been made and the proper symbol shall be used for the purpose of denoting any other change not indicated by the general statement referred to above.

(c) Omissions from previous tariff. When a tariff or supplement cancelling a previous issue omits points of origin or destination, routes, ratings, rules or other provisions contained in the previous issue, the new tariff or supplement shall indicate the cancellation in the manner prescribed in paragraph (a) of this rule, and if such omission effects changes in charges or services that fact shall be indicated by the use of the uniform symbols prescribed in paragraph (b) of this rule *[this section]*.

(d) Notation; matter (part) established on short notice. Every publication which consists partly but not wholly of matter established upon less than statutory notice shall show in connection with each change made effective on less than statutory notice a notation that such matter is issued on_____ days' notice under authority of (here give specific reference to the special permission, decision, order, rule, or other authority).

(e) Reissued matter. (1) Matter brought forward without change from a tariff which has not been in effect 30 days, also matter brought forward without change from one supplement to another, must be designated "Reissued" in distinctive type and must show the original effective date and the number of the supplement or tariff from which it is reissued, or must be uniformly indicated by the letter T in a square when reissued from another tariff or from a supplement to another tariff and by numerals, commencing with 1, in squares when reissued from a prior supplement to the same tariff, printed in distinctive type and shown in a conspicuous manner, and the explanation thereof must be made in the tariff or supplement in which the symbols are used. Example: "T Reissued from P.S.C.I. No. TR-_____ (or Supplement No._____, to P.S.C.I. No. TR-_____), effective _____, (date upon which item became effective in former tariff, or supplement to another tariff)." "[1] Reissued from Supplement No. 1, effective _____," and so on numerically, the figures of the symbols representing the number of the supplement to the same tariff from which the reissued item is brought forward. If items in a tariff or supplement are made effective on dates other than the general effective date shown on the title page, reissue of such items may be indicated in later publications by showing a letter suffix or other symbol in connection with, and as a part of, the letter T or the numerals in squares as herein authorized. If the reissued items have become effective in a supplement to another tariff, the P.S.C.I. number of that tariff shall also be given.

(2) The letter T in a square and numerals commencing with 1 in a square shall not be used as reference marks or symbols for any other purpose in any tariff or supplement.

(f) Loose-leaf tariffs. (1) Amendment of loose-leaf tariffs shall be made by reprinting the page upon which a change or addition is made, and such changed page shall be designated as a revised page. For example, "First Revised Page 1 Cancels Original Page 1", or "Second Revised Page 2 Cancels First Revised Page 2", etc. When a revised title page is issued, the following notation shall be shown in connection with and immediately under the effective date:

Original tariff effective (here show effective date of the original tariff).

(2) If, on account of expansion of matter on any page, it becomes necessary to add an additional page in order to take care of the additional matter, such additional page (except when it follows the final page) shall be given the same number with a letter suffix; for example, "Original page 4-A", "Original page 4-B", etc. If it is necessary to change matter on Original Page 4-A, it may be done by issuing First Revised Page 4-A, which shall indicate the cancellation of Original Page 4-A.

(3) When a revised page is issued which omits rates, rules, or other provisions previously published on the page which it cancels, and such rates, rules or provisions are published on a different page, the revised page shall make specific reference to the page on which the rates, rules, or provisions will be found and the page to which reference is so made shall contain the following notation in connection with such rates, rules or other provisions, etc.:

For (here insert rates, rules, other provisions, etc., as case may be) in effect prior to the effective date hereof, see Page_____.

Subsequently revised pages of the same number shall omit this notation insofar as this particular matter is concerned.

(4) If, after a loose-leaf tariff has been filed with the Commission, it is desired to file additional pages at the end of the tariff they shall be numbered consecutively with the last page of the tariff, and shall be designated as original pages. For example, when the tariff as filed has 150 pages, page 151 when filed shall not be designated as an "additional" page but shall be designated as "Original Page 151." Such a page may be filed only for the purpose of adding new provisions which do not change the rates, rules, or provisions on other pages of the tariff.

(5) One of the following methods shall be used in identifying and checking revised pages filed for the purpose of amending loose-leaf tariffs:

(i) When the original tariff is filed, the page next to the title page shall be designated as "check sheet" which shall show the number of pages contained in the tariff. When pages of the tariff are revised or when new pages are added, the check sheet shall be correspondingly revised to include the amended and added pages. The revised check sheet listing the added or revised pages shall accompany such pages when forwarded to the Commission for filing; or

(ii) Instead of a revised check sheet issued each time revised pages are filed, such revised pages may show, in the lower left-hand corner, correction numbers running in consecutive order beginning with No. 1, all revised pages issued and filed at the same time being given the same correction number. If this method is adopted, a permanent check sheet containing in numerical order a list of correction numbers beginning with No. 1 shall be filed with the original tariff in order to permit the checking of correction numbers on this sheet and thus to maintain a permanent record by number of all corrections received.

(6) Changes shall be indicated as required by paragraph (b) of this rule *[this section]*. Items which have been in effect 30 days or more need not be shown as reissued items on revised pages but may be republished as effective on 30 days' notice. Items which have not been in effect 30 days when brought forward on revised pages shall be shown as reissued in the manner prescribed in paragraph (e) of this rule *[this section]*.

(7) When protective covers for loose-leaf tariffs are used, only such information should appear thereon as will remain constant and in use during the life of the tariffs.

(8) Supplements shall not be issued to loose-leaf tariffs, except for the purposes authorized by Rule 10 and Rule 17. *(Department of State Revenue; No. 33034: Common Carrier Freight Tariffs and Classifications PT A,Rule 7; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 476) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-9) to the Department of State Revenue (45 IAC 16-3-9) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-10 Sectional tariffs; alternative use of rates

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 10. SECTIONAL TARIFFS. (a) Alternative use of rates in sectional tariffs. (1) The alternative use of rates may be provided by publishing such rates in different sections of the same tariff. The first page of each section, which shall be known as the title page of the section, shall contain the number of the section and the application of the rates published in that section. The title page of each section containing alternating rates shall also contain the following rule:

If the charge accruing under section _____ or _____ of this tariff is lower than the charge accruing under this section on the same shipment over the same route, the charge accruing under section _____ or _____ whichever is lower, will apply.

(2) Each succeeding page of the section shall also bear the section number. Unnecessary alternation of rates must be avoided by checking the rates in one section against those in other sections and omitting rates which would clearly result in charges higher than those in other sections. Alternating reference should not be given to another section unless the section actually contains rates which alternate.

(b) Nonalternating section. (1) Each commodity tariff arranged in sections for alternative use shall contain a nonalternating section and each class and commodity tariff similarly arranged for alternative use shall contain a commodity section which does not alternate with other sections of the tariff.

(2) When an exclusive commodity tariff is issued under authority of this section, Section 1 of the tariff shall not have alternative application with other sections. In the portion of the tariff containing rules, under the heading "Application of Rates," the following shall appear:

The rates in Section 1 are specific commodity rates and do not alternate with rates in other sections of the tariff. See application of that section.

(3) The title page of Section 1 shall contain the following notation:

When rates are published in this section on the commodity transported from point of origin to destination, rates named in this section will apply regardless of rates between the same points over the same routes, published in other sections.

(4) The title page of each other section containing commodity rates shall contain the following notation preceding that prescribed in paragraph (a) of this rule:

When rates are published in Section 1, the rates named in this section on the same commodity from and to the same points over the same route, will not apply.

(c) Position of sections. (1) When both class and commodity rates are published in separate sections of a tariff, under authority of this section, the class rates shall be published in a section preceding the commodity sections. Commodity rates which do not alternate with the rates in other sections shall be published in the first commodity section. Under the heading of "Application of Rates," in the rules portion of the tariff, the following notation shall appear:

The rates in Section 2 are specific commodity rates and do not alternate with rates in other sections of the tariff. See application of that section.

(2) The title page of the nonalternating commodity section shall contain the following notation:

When rates are published in this section on the commodity transported from point of origin to destination, rates named in the section will apply regardless of rates between the same points, over the same routes, published in other sections.

(3) The title page of each section containing commodity rates shall also contain the following notation preceding that prescribed in paragraph (a) of this rule:

Where rates are published in Section 2, the rates named in this section on the same commodity from and to the same points, over the same route, will not apply.

(d) Restrictions, publication of alternating rates. (1) Publication of alternative rates in different sections, of a tariff, is subject to the following restrictions:

(i) Only one alternation of class rates against class rates may be provided, and not more than two alternating sections of commodity rates, which may alternate with each other, will be permitted.

(ii) Rates published in another tariff may not be reproduced for alternative purposes;

(iii) One section of a tariff may not alternate with more than three other sections;

(iv) Except as otherwise authorized in Rule 4(f), a rate in one section may not alternate with a rate in the same section; and

(v) Alternating sections may not be subdivided.

(2) A tariff which, as originally filed, does not contain alternating sections may not be changed into one with alternating sections except by reissue; nor may another section be added by supplement to a tariff already containing alternating sections. *(Department of State Revenue; No. 33034: Common Carrier Freight Tariffs and Classifications PT A,Rule 8; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 479) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-10) to the Department of State Revenue (45 IAC 16-3-10) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-11 Partial cancellation of tariff; transfer of rates; item adjustment

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 11. TRANSFER OF RATES; ITEM ADJUSTMENT. (a) Transfer of rates from one tariff to another. If a tariff or supplement to a tariff or a revised page is issued which cancels another tariff in part only, such tariff, supplement, or revised page shall specifically state the portion of such other tariff which is thereby cancelled, and the tariff to be cancelled in part shall at the same time be correspondingly amended, effective on the same date, in the regular way; that is, by reissue if tariff contains four pages or less, by reissue or supplement if tariff contains more than four pages, and by revised pages if tariff is a loose-leaf tariff. Such reissue, supplement, or revised page of the tariff cancelled in part shall state where rates will thereafter be found and shall be filed at the same time and in connection with the tariff or supplement which contains the new rates. Cancellation notice on the title page of the new issue shall read substantially as follows: "Cancels P.S.C.I. No. TR-_____, to the extent shown in Supplement No._____ thereto."

(b) Cancellation when tariff reissued. (1) If a tariff is cancelled in full by another tariff, cancellation notice may be printed in the cancelling tariff as provided in Rule 2(a)(1), or the cancellation may be accomplished by issuing a supplement to the tariff to be cancelled. When a rate is cancelled by a supplement under this rule, such supplement shall refer to the P.S.C.I. number of the tariff in which the rates or other provisions will thereafter be found. The new issue and the cancellation supplement shall be made effective on the same date, and the new issue shall contain a cancellation notice reading substantially as follows: "Cancels P.S.C.I.

No. TR-_____, to the extent shown in Supplement No._____ thereto."

(2) When a tariff is cancelled in full by another tariff which does not contain all of the rates superseding those formerly in the cancelled tariff, the cancelling tariff shall show where rates not appearing therein will thereafter be found, or what rates thereafter will apply. For example: "Rates formerly published in P.S.C.I. No. TR-_____ and not appearing herein are published in P.S.C.I. No. Tr-_____ or _____," or it may be stated that such rates are cancelled and that "Class rates will apply," or "Combination rates will apply." (See Rule 7(c)).

(3) When the rates which are not brought forward in the cancelling issue are transferred to another tariff or tariffs, such publication or publications shall show directly in connection with the rates appearing therein for the first time where such rates were formerly published, shall state that such formerly published rates were cancelled by P.S.C.I. No. TR-_____, effective_____ (here show reference to the tariff which cancelled the rates).

(4) When a tariff is cancelled in full and numerous rates are transferred to two or more other issues, cancellation of the superseded issue may be made by supplement thereto, in which event each of the superseding issues shall show the notation in paragraph (a) of this rule and the cancelling supplement shall specifically indicate the rates or provisions thereafter to be published in each of the superseding issues, and shall state that the issue supplemented thereby is cancelled in full.

(5) When a joint agency tariff is to be cancelled in full and the rates therein are to be transferred to an agency tariff not issued by the same joint agents, the cancellation shall be accomplished by supplement. The cancelling supplement shall give reference by P.S.C.I. number and the name of agent or agents to the tariff in which future rates will be found and the new tariff shall show that rates from and to the points named therein were formerly published in P.S.C.I. No. TR-_____ (here show the P.S.C.I. numbers and names of agents appearing on the joint agency tariff that is cancelled by the supplement required in this paragraph).

(c) Cancellation notice must be by supplement. (1) If a tariff is cancelled with the purpose of discontinuing the rates named therein, or when, through error or omission, a tariff failed to cancel the previous issue and such previous tariff is cancelled for the purpose of perfecting the records the cancellation notice shall not be given a new P.S.C.I. number, but shall be issued as a supplement to the tariff (including loose-leaf tariffs) which it is desired to cancel. In the issuance of such supplement the provisions of Rule 6(d) need not be observed.

(2) When any tariff is cancelled in whole or in part by a supplement thereto, the supplement shall show where the rates will thereafter be found or what rates will thereafter apply.

(3) A tariff cancelling more than one tariff in whole or in part shall include a brief description of such tariffs.

(d) Transfer of rates from carriers' to agents' tariff and from agents' to carriers' tariff. (1) An agent, when publishing rates in his tariffs which are to supersede the rates in his principals' tariffs, shall cancel the rates in his principals' tariffs as directed in paragraph (a) or paragraph (b) of this rule, as the case may be. When cancellation of rates in the individual issue is made by supplement thereto in pursuance to this rule, such supplement must be issued by the individual carrier.

(2) A carrier may not publish in its individual tariff rates which are to supersede the rates published in a tariff of duly authorized agent unless the tariff is accompanied by a supplement issued by the agent cancelling the rates in his tariff effective on the same date, and indicating where rates superseding those cancelled will thereafter be found.

(3) As a concurrence does not confer authority upon either a carrier or an agent to cancel tariffs of the concurring carrier, tariffs issued under concurrence may not assume to cancel tariffs of concurring carriers. Such cancellations shall be made by the carrier or agent who issued the tariff which is to be cancelled, but the tariff or supplement containing the provisions formerly published in the issue of the concurring carrier may bear a notation stating where such provisions were formerly published.

(e) Definition of items. (1) The rates, rules, regulations, or other provisions of a tariff may, for convenience, be divided into relatively small and distinct portions which may be given individual numbers and designated "Items." The numbers of items as published in an original tariff should run in regular sequence but need not be consecutive; for example, items may be numbered, 5, 10, 15, 20, etc. Only one series of item numbers may be used.

(2) When any provision contained in an item, other than those contained in a classification, is amended, the revised item showing the amended provision shall be given the same item number with a letter suffix; for example: Item 40-A Cancels Item 40; Item 40-B Cancels Item 40-A; and so on.

(3) When any rate or provision contained in an item designated by an item number is amended resulting in the cancellation of all or a portion thereof, the cancelled matter shall not be reproduced in the new item effecting the cancellation except to the extent necessary to identify the item.

(4) If an item is withdrawn in its entirety, or expires by its own terms, leaving no rates or provisions in effect in that item, a statement of the cancellation or expiration shall be brought forward in subsequent supplements as a reissued item, bearing the same item number and the appropriate letter suffix.

(5) If the matter in an item or any part thereof is transferred to another tariff or another portion of the same tariff, the original item shall be revised (being given the same number with proper letter suffix) in order to show the revised provision or, when no effective provision is continued in the item, to indicate cancellation of the item and also to show where the transferred rates or provisions will thereafter be found. For example: "Item 10-A Cancels Item 10; rates formerly appearing in Item 10, but not shown herein will be found in Item_____ (or in P.S.C.I. No. TR-_____)."

(6) When provisions of an item have been eliminated by cancellation or expiration they may not be reinstated except by republication in a revised item bearing a new number or the same number with a new letter suffix, and in either case bearing a new effective date. In other words, republication of the expired or cancelled matter, except when the item is in a classification as provided in the next succeeding subparagraph of this paragraph, may be under the same item number only when the new item cancels the former item and is given the next letter suffix. For example: If the cancelled item is 40-A the new item shall read "Item 40-B Cancels Item 40-A."

(7) The items in each supplement to a classification shall be numbered consecutively, commencing with Item 1 on each page, shall cancel the item superseded and shall show where the cancelled item appears; for example: Item 6 Cancels Item 3, Page 2 of Supplement 2; Item 10 Cancels Item 1, Page 2, of classification. *(Department of State Revenue; No. 33034: Common Carrier Freight Tariffs and Classifications PT A,Rule 9; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 481) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-11) to the Department of State Revenue (45 IAC 16-3-11) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-12 Suspension of publication

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 12. SUSPENDED MATTER. (a) Supplement announcing suspension. (1) Upon receipt of an order suspending any publication in part or in its entirety, the carrier or agent who filed such publication shall immediately file with the Commission, and post in accordance with Rule 18, a consecutively numbered supplement, which shall not bear an effective date, containing a notice of suspension specifically indicating the portion of the publication that is under suspension and the date to which such matter is suspended, also stating that rates and provisions under suspension may not be used during the period of suspension and giving specific reference by P.S.C.I. number or numbers to the tariff or tariffs or supplements thereto or revised pages thereof in which rates, charges, classifications, rules, or provisions respecting practices continued in effect will be found. Such supplement shall quote the portions of the order which describe the suspended matter contained in the publication, the paragraph of the order naming the date to which such matter is suspended and the paragraph prohibiting changes in the matter continued in effect during the period of suspension.

(2) Upon receipt of an order resuspending any publication in part or its entirety beyond the date to which originally suspended the carrier or agent who filed such publication shall immediately issue and file with the Commission a supplement to each suspended tariff, which shall not bear an effective date, quoting in full the resuspension order and showing on the title page thereof a statement to the effect that the provisions suspended by the original suspension order in Investigation and Suspension Docket No. _____ as indicated by Supplement No. _____ (here show the number of the supplement announcing the original suspension under the same I. and S. Docket number) are further suspended until _____ (here show the date to which the suspended matter is further suspended, as indicated in the resuspension order).

(b) Reissue of suspended matter to be cancelled. If, prior to the filing of the supplement announcing suspension, a carrier or agent files a later supplement which contains as reissues the matter suspended in the previous supplement, the suspension supplement required by this section shall also specifically cancel from the later supplement such reissued matter, and by amendment to the title page of said later supplement shall eliminate the cancellation of the suspended supplement when the latter is suspended in full, and when a supplement is suspended in part shall provide that such later supplement cancels such previous supplement, except portions under suspension. Tardiness in filing supplements announcing suspension may result in the rejection by the Commission of the later supplement which cancels the suspended matter.

(c) Reissue of effective tariff when suspended tariff is ordered cancelled. (1) When the Commission suspends an entire tariff, any tariffs which would have been cancelled by the suspended tariff are continued in effect and will remain in force during the period of suspension or until lawfully cancelled or reissued. Except in the case of loose-leaf tariffs or tariffs of less than five pages, supplements to tariffs thus continued in effect containing additions to and changes in matter not sought to be changed by the suspended tariff, may be filed without regard to the volume of supplemental matter which the effective supplements in the aggregate

contain. If the volume of supplemental matter permitted by Rule 6(d) is exceeded under authority of this paragraph and the Commission orders the cancellation of the suspended tariff, the volume of supplemental matter in the tariff continued in effect by such suspension shall be brought within the requirements by Rule 6(d) by supplement filed within 120 days, or such tariff shall be reissued within that time.

(2) Suspension of portions of a tariff or of matter contained in a supplement does not authorize disregard of Rule 6(d) relative to the permissible volume of supplemental matter in and the number of effective supplements to such tariff, except that a supplement containing volume of supplemental matter permitted of such tariff under Rule 6(d) provided the effective matter in such supplement is reissued and the supplement itself, except the suspended portions thereof is cancelled.

(3) When a tariff (or supplement) which is suspended in part is reissued, such reissue shall cancel the tariff (or supplement) containing the suspended matter "except portions under suspension in I. and S. Docket No._____." If a supplement is suspended in whole or in part and the tariff is thereafter reissued, the reissue shall cancel the tariff "Except portions under suspension in Supplement No._____(or in Item No._____or Supplement No._____) in I. and S. Docket No._____" and, if the matter continued in effect by the suspension is contained in the tariff being reissued, such matter shall be brought forward. When a tariff which is suspended in part is reissued, such reissue shall cancel the tariff containing the matter which is continued in effect by reason of the suspension when such tariff contains no other effective matter.

(d) No change may be made in suspended provisions not in provisions left in effect by reason of suspension. A suspended rate, charge, classification, rule or provision respecting practices may not be changed or withdrawn or the effective date thereof further deferred except by order or special permission of the Commission, nor may any change be made in a rate, charge, classification, rule or provision respecting practices which is continued in effect as a result of such suspension except under order or special permission of the Commission.

(e) When Commission's order of suspension vacated. (1) When the Commission vacates an order of suspension effective on a date earlier than the date to which the matter is suspended, the carrier or agent who filed the suspended tariff, supplement, or revised page may file with the Commission, and post in accordance with Rule 18, on not less than 1 day's notice, unless otherwise provided by the order, a supplement stating the date upon which, under authority of the vacating order, the tariff, supplement, revised page, item, rate, charge, classification, rule or provision respecting practices will become effective. Unless the supplement announcing vacation is filed naming a date earlier than the date to which it is suspended, the suspended matter will become effective on that date.

(2) When an order which suspended a tariff in its entirety is vacated, the vacating supplement, if made effective on or before the date to which the tariff is suspended, may also include as reissues, any changes or additions lawfully established in supplements to the tariff which remained in effect during the period of suspension. If a new tariff is filed during the period of suspension, cancelling the tariff sought to be cancelled by the suspended tariff, any changes or additions published in the new tariff which are not included in the suspended tariff may be included in vacating supplement as reissued matter, provided the vacating supplement also cancels such new tariff. When reissued matter is published in a vacating supplement the vacating notice shall be printed in not less than 10-point type, either on the title page or immediately following indexes of points and commodities, if any.

(3) When a tariff containing suspended matter is cancelled during the period of suspension, except portions under suspension, by a new tariff, and the Commission vacates its suspension order in its entirety effective on a date subsequent to the effective date of the new tariff, a supplement to the new tariff effective on not less than 1 day's notice republishing and establishing the suspended matter and cancelling the matter which was effective during the period of suspension also cancelling the matter under suspension in the former issue, shall be filed and posted in accordance with Rule 18. When the Commission vacates its suspension order effective on a date prior to the effective date of the new tariff, a vacating supplement to the old tariff should be filed and posted and a supplement to the new tariff should also be filed and posted on not less than 1 day's notice, establishing therein on the effective date of such new tariff, matter which was under suspension in the old tariff. A common supplement to both tariffs as authorized by Rule 6(f) may be filed and posted upon not less than 1 day's notice to accomplish this purpose.

(f) Cancellation of suspended matter. When the Commission orders the cancellation of a tariff, supplement, revised page, item, rate, charge, classification, rule or provision respecting practices previously suspended by it, the cancellation shall be effected by filing with the Commission and posting upon not less than 1 day's notice, unless otherwise provided by the order, a supplement stating the date upon which in accordance with the Commission's order said rate, charge, classification, rule or provision respecting practices is cancelled; except that, when desired, such cancellation may be accomplished in a new tariff cancelling the tariff containing the suspended matter.

(g) Notation on supplement. (1) Every suspension, vacating and cancellation supplement issued under authority of this rule shall bear on its title page the following notation: "Issued under authority of Rule 10, Part A, Tariff Regulations, and in compliance

with order of the Public Service Commission of Indiana, in Investigation and Suspension Docket No. _____ of _____."
(Date)

(2) Such supplements will not be counted against the number of effective supplements or the volume of supplemental matter permitted under Rule 6(d) but they must list effective supplements as required by Rule 6(a).

(3) The provisions of this rule relating to suspension, vacating and cancellation supplements will also govern in connection with tariffs issued in loose-leaf form, except that such supplements shall not contain rates, charges, classifications, rules, or provisions respecting practices. All changes made in loose-leaf tariffs shall be published on revised pages.

(4) Supplements issued under authority of this rule shall contain nothing except matter permitted thereunder. *(Department of State Revenue; No. 33034: Common Carrier Freight Tariffs and Classifications PT A, Rule 10; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 484) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-12) to the Department of State Revenue (45 IAC 16-3-12) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-13 Terminal and special service tariffs

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 13. TERMINAL AND SPECIAL SERVICES. (a) Terminal and special services. Each carrier or its agent shall publish, post, and file tariffs which shall contain in clear and explicit terms all of the rates and charges for rules governing detention of vehicles, storage, weighing diversion, reconsignment, icing, refrigeration, heat, C.O.D. services, transit services, absorptions, allowances, and other terminal services, and all other charges and rules which in any way increase or decrease the amount to be paid on any shipment, or which increase or decrease the value of the service to the shipper. Tariffs authorizing such services or providing charges therefor, shall clearly show their application.

(b) Method of publication. The performance of special services and the charges therefor, in addition to those based on line-haul rates lawfully on file with the Commission, shall be provided for in one of the following three ways:

(1) By including in the tariff which contains the rates on which charges are based the specific authority for the extra service, the rules under which such extra service is to be performed, and the charge, if any, for the service; (2) by specific reference, in the tariff which contains the rates on which charges are based, to the P.S.C.I. number of a separate publication containing the provision for such service and the charge, if any, for it; or (3) by including in the tariff which contains the rates on which charges are based, a clause providing that shipments made under the rates contained therein are entitled to the following services (naming specifically the services which will be permitted in connection with such rates) and that shipments are subject to the charges for such services, if any, of participating carriers performing the services "as shown in tariffs lawfully on file with the Public Service Commission of Indiana."

(c) Intermediate drayage or transfer. (1) Joint through rates from points on the line of one carrier to points on the line of another carrier include drayage or other transfer services at intermediate transfer points, and no part of such charges may be added to the joint rates on shipments handled through and not stopped for special service at such intermediate transfer points.

(2) All tariffs containing joint rates shall contain the following provision:

The joint rates published herein include all charges for drayage or other transfer services at intermediate transfer points on shipments handled through and not stopped for special services at such intermediate transfer points.

(d) Pick-up and delivery service. (1) All tariffs containing rates for the transportation of property shall specify whether such rates do or do not include pick-up and delivery service at all points within the limits of the cities, towns, or villages from, to or between which the rates apply.

(2) If pick-up and delivery service will be performed also in an area beyond or outside the limits of the cities, towns, or villages, from, to or between which the rates apply, such area shall be described in the tariffs. *(Department of State Revenue; No. 33034: Common Carrier Freight Tariffs and Classifications PT A, Rule 11; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 487) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-13) to the Department of State Revenue (45 IAC 16-3-13) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-14 Distance or mileage rates

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 14. DISTANCE RATES. (a) Distance rates may be used when no other rates provided. (1) A carrier or an agent acting for a carrier or carriers, may file tariffs containing distance or mileage class or commodity rates, or both. Except as otherwise provided in these rules, distance or mileage class rates may be used only when no through class rates (other than distance class rates) are published to apply from and to the same points over the same route, and distance or mileage commodity rates may be used only when no through commodity rates (other than distance commodity rates) are published to apply from and to the same points over the same route. Except as otherwise provided in these rules, distance or mileage commodity rates will apply even though through class rates are published to apply from and to the same points over the same route.

(2) Tariffs containing distance or mileage rates shall clearly and definitely show the application of the rates. Distance tariffs of regular route carriers shall contain an alphabetical list of points between which the rates apply and shall also show in proper arrangement the distances between such points, or shall make reference by P.S.C.I. number to a separate tariff, constructed in accordance with one of the plans set forth in paragraph (c) of this rule, for such list of points and distances. Tariffs of irregular route carriers naming mileage rates may either contain a list of points served together with distances or may refer by P.S.C.I. number to a distance guide or guides issued by such carriers or their duly authorized agents clearly and accurately indicating distances between all points served.

(b) Notation on distance class rate tariff. (1) Each tariff that contains only distance or mileage class rates must bear on its title page the following rule:

Distance or mileage class rates shown herein may be used only when no commodity rates or class rates (other than distance class rates) have been published to apply from and to the same points over the same route.

(2) Each tariff that contains only distance or mileage commodity rates must bear on its title page the following rule:

Distance or mileage commodity rates shown herein may be used only when no commodity rates (other than distance commodity rates) have been published to apply from and to the same points over the same route.

(3) Each tariff that contains only distance or mileage class and commodity rates must bear on its title page the following rule:

Distance or mileage class rates shown herein may be used only when no commodity rates or class rates (other than distance class rates) have been published to apply from and to the same points over the same route, and distance or mileage commodity rates shown herein may be used only when no commodity rates (other than distance commodity rates) have been published to apply from and to the same points over the same route.

(4) If distance or mileage rates without alternative application are published in a tariff which also contains rates other than distance rates, the notations for class, or commodity, or both class and commodity rates, as the case may be, prescribed by this section shall be shown immediately in connection with such distance or mileage rates.

(c) Local distance table must be filed. (1) Each regular route carrier that maintains local distance or mileage rates published in a tariff which does not contain a list of points between which such rates apply together with distance between such points shall publish, post, and file, individually or through an agent, a tariff containing a list of points served and the distances over its line between such points, arranged in one of the following four ways:

(i) Showing the distance from each point to each point.

(ii) Showing the distance from each point to each transfer point with another carrier or with a branch of the same carrier.

(iii) Showing the distance from each transfer point with another carrier or with a branch of its own line to each other such transfer point, and the distance from each local point to the nearest transfer point in each direction.

(iv) Until further notice, carriers may comply with this rule by including in each tariff naming distance rates a map, specially prepared and made an integral part of the tariff, indicating clearly and accurately the distances between all points between which rates are published. Instead of including separate maps in rate tariffs, reference may be made in the rate tariff to a separate distance guide constructed on the principle of maps, or combination of tables and maps, definitely and clearly indicating distance between the points covered by the rate tariff making reference thereto. All carriers parties to rate tariffs making reference to separate distance guides must be parties also to the distance guide referred to in the rate tariff.

(2) Each of such tariffs shall clearly indicate the transfer points at which the carrier interchanges traffic and shall name the connecting carrier with which transfer is made at each such transfer point.

(d) Joint distance or mileage tables. (1) Carriers, operating over regular or irregular routes, that participate in joint distance or mileage rates must either (i) publish in the tariff containing such joint distance or mileage rates or in a separate duly authorized publication an alphabetical list of all points between which such distance or mileage rates apply and the distances from each of such points to every other point, indicating in an appropriate manner which of such points are transfer points at which it is possible to interchange traffic and naming the connecting carriers at each such transfer point with which such transfer is possible; or (ii) file through an agent, duly authorized, a separate joint publication which shall contain an alphabetical list of all the transfer points on

their respective lines at which it is possible to interchange traffic in the area embraced by the application of such joint distance or mileage rates, together with the names of the connecting carriers at each transfer point with which transfer is possible, and the distance from each such transfer point to each other transfer point; and they shall, in the tariffs containing such joint distance or mileage rates, give reference by P.S.C.I. number to such separate joint publication. The latter shall also contain the distance from each local station to the nearest transfer point in each direction over the line of the same carrier, or the tariff containing the joint distance or mileage rates shall refer by P.S.C.I. number to the tariff or tariffs of each carrier containing the distances between points on its line and such junction points.

(2) Until further notice, a method of publication of distances similar to that authorized in paragraph (c) (1) (iv) of this rule *[this section]* may be used instead of the methods of publication specified in paragraph (1) (i) and (ii) of this paragraph.

NOTE: It is not intended by the two preceding paragraphs to require carriers to have a separate publication for each rate tariff containing joint distances or mileage rates but all the distances over which joint rates in which such carrier participates may be included in one publication. *(Department of State Revenue; No. 33034: Common Carrier Freight Tariffs and Classifications PT A, Rule 12; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 488) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-14) to the Department of State Revenue (45 IAC 16-3-14) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-15 Tariffs containing classifications, exceptions, rules

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 15. CLASSIFICATION, EXCEPTIONS, AND RULES TARIFFS. (a) Classification. A tariff may be filed containing a classification of the articles or commodities upon which the rates named in other tariffs making reference thereto will apply. The various articles or commodities shall be listed in the classification in an orderly manner and a rating indicating the class rate to be applied shall be shown in connection with each item or items containing a description of the articles. Such a tariff shall contain an alphabetically arranged index of all of the articles or commodities so listed. It is not permissible to state that the rating or rate on any article will be that applying upon another article. For example: The classification may not state that "Fire clay, crude or ground," will take "Fire-brick rates." If it is intended that fire clay take the same rating as is designated for fire brick, the same rating shall be shown in connection with the item listing fire clay.

(b) Rule in classification. (1) Each classification shall contain the following rule:

The establishment of a commodity rate removes the application of the class rate on the same article between the same points over the same route, except when and insofar as alternative use of class and commodity rates is specifically provided in the tariff containing such commodity rates.

(2) In applying the rule in subparagraph (1) of this paragraph, a local commodity rate will take precedence, on traffic originating or destined beyond, over a proportional class rate between the same points over the same route whether higher or lower.

(c) Rules. Rules which have a general application in a classification territory, or throughout the state, may be published in a classification tariff. Such rules must precede the list of articles shown in the classification and must be consecutively numbered and separately indexed.

(d) Exceptions to classification. (1) A separate tariff may be filed containing exceptions to the classification for application in connection with tariffs or rates making reference thereto. Each classification exceptions tariff shall contain the rule above provided for a classification tariff. Exceptions published therein must not be restricted to a small number of points in order to avoid the publication of commodity rates between such points. One rate tariff may be governed for account of any one carrier by not more than one tariff of exceptions to each classification governing the tariff, published either individually or by an agent. A tariff of exceptions may not contain any matter which is not in fact an exception to a rule, rating, or other condition published in a classification, except as provided in paragraph (e) of this rule, nor will it be permissible to state that the rating or rate on any article will be that applying to another article. When tariffs naming joint rates make reference to separate publications containing exceptions to the classification, the tariffs of exceptions must be concurred in by all of the carriers participating in the joint rates.

(2) Different classification ratings on the same article, or articles, based on different minimum quantities may be published in an exceptions tariff provided the lowest charge resulting from any such rating applied in connection with its published minimum (or actual quantity shipped, if greater) is made applicable by publishing such ratings in the same item and by providing in connection with such item a rule to the effect that the lowest charge obtainable under the different rating a minima applicable thereto (or actual quantities if greater) will be applied.

(3) Tariffs containing exceptions to the classification may not provide for the alternation of such exceptions with the classification proper.

(e) To be arranged same as classification. (1) The matter in a tariff of exceptions shall be arranged in the same order as in the classification and separate and complete alphabetical indexes of the rules and of the articles listed therein shall be shown. Each general rule published in the exceptions to the classification shall be given a number and shall refer to the rule in the classification to which it is an exception. The following notation shall be shown on the title page of each tariff of exceptions:

Applicable only in connection with tariffs making reference to the P.S.C.I. number hereof.

(2) When desired, rules and regulations covered by Rule 3(h) may be included in the same publication with classification exceptions. In such cases, the classification exceptions tariff will be counted in applying the provisions of paragraph (f) of this rule *[this section]*. Lists of commodities authorized in Rule 4(e) may also be included with classification exceptions, in which case carriers may not have other tariffs publishing commodity lists exclusively. Where classification exceptions are published in the same tariff with rules, or commodity lists, the publication should be divided into sections, the first containing the classification exceptions, the second containing the rules and similar provisions, and the third containing the lists of articles. Such a publication shall contain a complete index.

(f) Rules may be published in separate tariffs. (1) If it is not desirable or practicable to include the governing rules and similar provisions in the rate tariff, such rules and similar provisions may be separately published in tariffs filed by an individual carrier or by an agent. Except as noted below, any carrier may not apply more than two such rules tariffs, one of which shall be published by such carrier itself, and the other by an agent. The following tariffs will not be counted in applying the provisions of this paragraph. Tariffs containing exclusively rules and charges applying to the special services covered by Rule 11; classification and classification exceptions tariffs authorized by paragraphs (a) and (d) of this rule; rate basis books authorized by Rule 14; and tariffs containing rules and regulations governing the transportation of explosives and other dangerous articles.

(2) When rules or regulations are thus separately published, rate tariffs may be made subject thereto only by specific P.S.C.I. reference in the rate tariff. This reference should be made in substantially the following form:

Governed, except as otherwise provided herein, by rules (or regulations) shown in P.S.C.I. No._____, supplements thereto or successive issues thereof. (When issued by an agent, add "Issued by_____, Agent.")

(g) Explosives regulations. Tariffs which name rates for the transportation of explosives, inflammable or corrosive materials, or other dangerous articles shall, as required by Rule 3(h), contain the hazardous materials regulations promulgated by the Department of Transportation governing the transportation of such articles or give reference to a separate publication filed with this Commission by the carrier or by an agent containing such regulations. When the latter method is adopted, the tariff to which reference is made shall contain nothing except the regulations promulgated by the Department for handling such articles and necessary provisions for the application of such regulations.

(h) Participation in governing publications. All carriers parties to tariffs making reference to separate publications for classification ratings, exceptions thereto, rules, or other provisions affecting the rates or the services rendered, except such carriers as indicated by restrictions published in the tariffs making reference to such separate publications that they will not apply the provisions therein, shall also be participating carriers in such separate governing publications. This section does not require participation in local drayage tariffs or tariffs containing other provisions which are local to the lines publishing such tariffs. *(Department of State Revenue; No. 33034: Common Carrier Freight Tariffs and Classifications PT A, Rule 13; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 490) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-15) to the Department of State Revenue (45 IAC 16-3-15) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-16 Rate basis books

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 16. RATE BASIS BOOKS. (a) Rate basis books. (1) Separate tariffs may be published, filed, and posted showing the rate groups or rate bases to be used in determining rates between points named therein. When such a separate publication is issued, reference shall be made in the rate tariff to the P.S.C.I. number of such separate publication in substantially the form prescribed in Rule 3(f). All carriers parties to the rates governed by the rate basis book shall be shown as participating carriers both in the rate tariff and in the separate publication.

(2) No rate may be governed by more than two such separate publications, one for points of origin and one for points of destination. A rate tariff may not refer to another rate tariff for list of points assigned rate groups or rate bases.

(b) Order of arrangement. Rate basis books must conform to the following requirements. Such a publication shall not contain rules for application of bases or rates at intermediate points. The name of the carrier serving each point shall be shown, and the points in such publication shall be arranged in alphabetical order, or such publication shall contain an index as provided in Rule 3(d). The rate group or rate bases, or arbitraries or differentials to be added to or deducted from the group or base rates, shall be shown immediately in connection with the name of each point, except that reference may there be made to an item showing such information. Exceptions to the rate group or rate bases should not be made in rate basis books unless such exceptions apply to or from a considerable number of points or on a considerable number of commodities. When arbitraries or differentials which are to be added to or deducted from the base or group rates are governed by classification provisions, other than those governing the base or group rate, reference to such other classification provisions shall be made immediately in connection with arbitraries or differentials.

(c) Rules governing rates. All the rules and other provisions governing the application of rates determined by the use of a rate tariff and rate-basis books shall be published in the rate tariff or made a part thereof by reference as provided in Rule 3(h) and Rule 13(f).

(d) Carrier's operating rights. A separate section in a rate-basis book or a separate tariff similarly constructed, published, and filed, may include information describing the operating rights of the carriers parties thereto as set forth in the carriers' certificates. *(Department of State Revenue; No. 33034: Common Carrier Freight Tariffs and Classifications PT A, Rule 14; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 493) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-16) to the Department of State Revenue (45 IAC 16-3-16) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-17 Joint tariffs

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 17. TARIFFS OF JOINT AGENTS. (a) Joint tariffs issued by joint agents. An agent for certain carriers may join with not more than two other agents for other carriers in the issuance of tariffs. This may be done without each of such agents having powers of attorney from all of the carriers parties to the tariff as required by Rule 3(b), provided each carrier is shown as participating under authority issued to one of such agents. In such cases, each agent acts for the carriers that have given him powers of attorney or have given concurrences to the carriers issuing powers of attorney and for such lines only.

(b) P.S.C.I. numbers and filing. Such publication shall bear a separate P.S.C.I. number in the series of each agent and each of the agents shall file the publication and each and every supplement thereto for and on behalf of the carriers for which he is agent, as if it were his individual publication on behalf of those carriers alone.

(c) Tariffs and supplements must be identical and must be filed under one cover. The tariff filed by one agent is not a complete publication properly authorized by all carriers named therein. It is a complement of the tariff filed by each agent, and, therefore, identical copies of each tariff and of each supplement thereto, must be filed by each agent. As each agent will file the tariff for the carriers which he lawfully represents, the cross exchange of concurrences between all of the different carriers represented by each agent will not be necessary as to that tariff. In order to avoid complications, all copies of each publication, accompanied by a letter of transmittal signed by each agent, shall be filed under one cover by one agent. A tariff filed by one agent shall not be amended to show an additional agent as participating in issuance thereof except upon reissue of the tariff; nor shall a tariff issued by joint agents be converted into one issued by a lesser number of agents except by reissue.

(d) List of participating carriers. Each publication issued by two or three agents jointly shall show one complete alphabetical list of participating carriers indicating the carriers from which each of the agents has power of attorney, by showing in separate columns the form and number of the authority granted to each, and also indicating the carriers that participate under concurrences to any of the carriers for which one of the agents acts, by showing in an additional column the form and number of such concurrences together with appropriate reference marks to indicate the carriers to whom the concurrences are given. *(Department of State Revenue; No. 33034: Common Carrier Freight Tariffs and Classifications PT A,Rule 15; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 493) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-17) to the Department of State Revenue (45 IAC 16-3-17) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-18 Rates prescribed by commission; promulgation in tariffs; notice requirements

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 18. RATES PRESCRIBED BY COMMISSION. (a) Rates prescribed by Commission must be promulgated in tariffs and Commission notified. Rates prescribed by the Commission in its decisions and orders in formal cases shall be promulgated by the carriers to which such orders are issued in duly published, filed and posted tariffs, revised page, or supplement, and notice shall be furnished the Commission that its decision (or order) in Docket No._____, has been complied with in Item _____, page _____ of _____ tariff, P.S.C.I. No._____ or Supplement No._____ to_____ tariff, P.S.C.I. No._____. Unless otherwise specified in the decision or order in the case, the prescribed rates shall be made effective upon statutory notice to the Commission and to the public.

(b) Notation on tariff. (1) When an entire tariff or supplement is issued in compliance with a decision or order of the Commission, whether made effective on less than statutory notice under special authority granted in the decision or order in the case or upon statutory notice, such tariff or supplement shall bear on its title page the notation, "In compliance with decision (or order) of the Commission in Docket No._____." (When possible, the volume and page number of the report of the Public Service Commission of Indiana should be shown.)

(2) If the decision or order of the Commission affects only portions of the tariff or supplement, the above notation shall be shown in connection with each portion so affected. *(Department of State Revenue; No. 33034: Common Carrier Freight Tariffs and Classifications PT A, Rule 16; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 494) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-18) to the Department of State Revenue (45 IAC 16-3-18) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-19 Transfer of operations; changes in name and control; adoption notice; supplements to tariffs

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 19. TRANSFER OF OPERATIONS; CHANGES IN NAME AND CONTROL. (a) Complete adoption notice. (1) When the name of a common carrier is changed, or when its operating control is transferred to another common carrier, the carrier which will thereafter operate the properties shall file with the Public Service Commission of Indiana and post as required in Rule 18 an adoption notice in the form of a tariff numbered in its P.S.C.I. series and containing substantially the following:

(Name, also trade name, if any, of adopting carrier) hereby adopts, ratifies, and makes its own, in every respect as if the same had been originally filed and posted by it, all tariffs, classifications, rules, notices, traffic agreements, statements of divisions, powers of attorney, concurrences, or other instruments whatsoever, including supplements or amendments thereto, filed with the Public Service Commission of Indiana by, or heretofore adopted by (name and trade name, if any, of former carrier) prior to (date).

(2) In addition to the above adoption notice the adopting carrier shall immediately file with the Public Service Commission of Indiana and post as required in Rule 18 a consecutively numbered supplement to each of the effective tariffs issued or adopted by its predecessor, reading as follows:

Effective (here insert date shown in the adoption notice) this tariff, or as amended, became the tariff of (name and trade name, if any, of the adopting carrier) as stated in its adoption notice P.S.C.I. No. TR-_____.

(3) Subsequent supplements to adopted tariffs shall be numbered consecutively, beginning with the number following that of the adoption supplement, and shall show in connection with the P.S.C.I. number that the number is in the series of the former carrier.

(4) New tariffs reissuing or superseding adopted tariffs shall be numbered in the P.S.C.I. series of the adopting carrier. The adopting carrier, when cancelling any tariff issued or adopted by the old carrier, shall identify such tariff in the cancellation notice by reference to its P.S.C.I. number, by reference to the name of the carrier that issued it, and, when tariffs have been published by the old carrier in more than one series, by reference to the particular series in which that tariff was published.

(b) Old carrier's name to be eliminated and new carrier's name added. Tariffs issued by other carriers or agents participated in by a carrier whose name is changed or that is absorbed, taken over, or operated by another carrier or of a carrier whose name is changed, shall be amended on statutory notice in the regular way (that is, by the next supplement or revised page filed) to eliminate from the list of participating carriers the name of the old carrier and to add thereto the name of the new carrier. Such supplement or revised page shall also contain the following provision:

(Name and trade name, if any, of the adopting carrier) by its adoption notice, P.S.C.I. No. TR-_____, which became effective on _____ having taken over the tariffs, etc., of (name and trade name, if any, of the former carrier), (name and trade name, if any, of the adopting carrier) is hereby substituted for (name and trade name, if any, of the old carrier) wherever it appears in this tariff.

(c) Partial adoption notice. (1) When the operating control of a common carrier's properties is transferred in part to another common carrier, the carrier which will thereafter operate that part of the properties shall file with the Public Service Commission of Indiana and post as required in Rule 18, an adoption notice in the form of a tariff numbered in its P.S.C.I. series and containing substantially the following:

(Name and trade name, if any, of adopting carrier) hereby adopts, ratifies, and makes its own in every respect as if the same had been originally filed and posted by it, all tariffs, classifications, rules, notices, traffic agreements, statements of divisions, powers of attorney, concurrences, or other instruments whatsoever, including supplements or amendments thereto, filed with the Public Service Commission of Indiana by, or heretofore adopted by (name and trade name, if any, of the original carrier) prior to (date) insofar as said instruments apply (here describe the operations transferred).

(2) In addition to the above adoption notice, the old carrier shall immediately file with the Public Service Commission of Indiana and post as required in Rule 18, under proper concurrence from the adopting carrier, a supplement to each of its effective tariffs covered by the adoption notice reading as follows:

Effective (here insert date shown in adoption notice) this tariff or as amended, insofar as it contains rates, rules, and other provisions applying (here describe the operations transferred), became the tariff of (name and trade name, if any, of the adopting carrier) as stated in its adoption notice, P.S.C.I. No._____.

(d) Tariffs to be amended. (1) Tariffs issued by other carriers or agents applicable in connection with that part of the line taken over or operated in part by another carrier shall be amended on statutory notice in the regular way, that is, by the next supplement or revised page filed, to incorporate necessary changes. Such supplement or revised page shall also contain a provision in the following form:

(Name and trade name, if any, of the adopting carrier) by its adoption notice P.S.C.I. No._____, having taken over tariffs, etc., of (name and trade name, if any, of the old carrier) insofar as they contain rates, charges, rules, and other provisions applying (here describe the operations transferred), (name and trade name, if any, of the adopting carrier) is hereby substituted for (name and trade name, if any, of the old carrier) whereby the latter appears in this tariff in connection with said points, routes, or territory.

(2) Rates, rules, and other provisions applying locally between points on the transferred portion shall be transferred as quickly as possible to tariffs of the adopting carrier. The former carrier shall cancel such rates, rules, and other provisions from its tariffs on statutory notice and shall refer by P.S.C.I. number to the tariffs of the adopting carrier for rates to apply thereafter. The adopting carrier shall publish, file and post corresponding rates, rules, and other provisions on statutory notice to become effective upon the date upon which the cancellation of the former carrier's rates, rules, and other provisions become effective.

(3) If, after the transfer of operations, any point will be served by both the former carrier and by the adopting carrier, a statement shall be shown in connection with the name of that point reading substantially as follows:

This adoption notice does not have the effect of eliminating_____ as a point served by (name and trade name, if any, of the original carrier), but has the effect of establishing service at said point by (name and trade name, if any, of the adopting carrier).

(e) Receiver, etc., must file adoption notice and supplement. Adoption notices and supplements similar to those prescribed in paragraphs (a) and (c) of this rule *[this section]*, but numbered consecutively in the series of the old carrier, shall immediately be filed and posted by a receiver, trustee, executor, administrator, assignee, or lessee when he assumes possession and operating control of a carrier's lines, either in whole or in part, and shall show the names of the receivers, trustees, executors, administrators, assignees, or lessees on the title page in connection with the former carrier's name. When such possession and operating control are terminated, the carrier taking over the properties shall file an adoption notice and if a change in the name of the carrier has been made, shall also file supplements as prescribed in paragraphs (a) and (c) of this rule *[this section]*.

(f) Adoption notice effective date. (1) Notices of adoption shall be filed and posted immediately and if possible on or before the date shown therein. Copies shall be sent to each agent or carrier to which power of attorney or concurrence has been given by the adopted carrier. The effective date shall be the date (as shown in the body of the notice) on which the change in name or operation occurs, except that if prior approval of such change by the Commission is required, the effective date shown shall not antedate that approval.

(2) Concurrences and powers of attorney adopted by a carrier, receiver, trustee, executor, administrator, assignee, or lessee shall, within 120 days, be replaced and superseded by new concurrences and powers of attorney issued by and numbered in the series of the adopting carrier, receiver, trustee, executor, administrator, assignee, or lessee, except that receivers, trustees, executors, administrators, assignees, or lessees may continue concurrences and powers of attorney in the same series of numbers. The cancellation references to the former concurrence or power of attorney shall include the name of the former issuing carrier. Powers

of attorney and concurrences which will not be replaced by new issues shall be regularly revoked on the notice and in the manner prescribed by Rule 20(n) and Rule 21(d).

(3) Adoption notices and special supplements issued under the authority of this rule shall contain no other matter.

(g) Temporary control. (1) When temporary authority to take over the operating control of all or a portion of the operations of a carrier is granted by the Public Service Commission of Indiana, the new carrier that assumes temporary control of the operations of the old carrier shall comply with the provisions of paragraphs (a), (b), (c), (d), and (f) of this rule except that the new carrier is not required to reissue the adopted concurrences and powers of attorney during the period of temporary control of the operations of the old carrier. New concurrences and powers of attorney granting authority to publish rates from or to points included in the temporarily controlled operations, shall be in the series of the old carrier; for example:

P.S.C.I. No._____ (Roe's Trucking Series)
JOHN DOE TRANSPORT, INC.
Operator of
Richard Roe
d/b/a
Roe's Trucking
(Post Office Address)

(2) The new carrier, when it publishes in a tariff issued in its name, rates, charges, and other provisions relating thereto, from, to, or between points included in the temporarily controlled operations, shall file such publication in the name of the new carrier as operator of the old carrier under consecutive P.S.C.I. numbers and in the series of the old carrier. For example, if John Doe Transport, Inc., assumes temporary control of the operation of Richard Roe, d/b/a Roe's Trucking, the title page of tariffs or supplements thereto, must show the P.S.C.I. number and name of the carrier in substantially the following manner:

P.S.C.I. No. TR-17 (Roe's Trucking Series)
JOHN DOE TRANSPORT, INC.
Operator of
Richard Roe
d/b/a
Roe's Trucking

(Department of State Revenue; Common Carrier Freight Tariffs and Classifications PT A,Rule 17; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 495) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-19) to the Department of State Revenue (45 IAC 16-3-19) by P.L.72-1988, SECTION 12, effective July 1, 1988.

45 IAC 16-3-20 Filing of tariffs; posting; rejection

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 20. FILING AND POSTING TARIFFS. (a) Filing tariffs. Tariffs and supplements thereto shall be filed by the proper officer or duly authorized agent of the carrier. When filed by an officer, the concurrence, and when filed by an agent, the power of attorney of every carrier participating therein shall be on file with the Commission or accompany the tariff or supplement. Tariffs shall be filed by the issuing carrier or agent, and such filing will constitute filing for all carriers parties thereto. An agent duly authorized to act for carriers shall file tariffs under his own P.S.C.I. serial numbers.

(b) Avoid conflict between tariffs. A carrier that grants authority to an agent or to another carrier to publish and file certain of its rates shall not in its own issues publish rates which duplicate or conflict with those which are published by such authorized agent or other carrier.

(c) Numerical order, or explanation of missing numbers required. Each carrier and agent shall file tariffs and supplements under consecutive P.S.C.I. or supplement numbers. If, for any reason, this is not done, the tariff or supplement which is not numbered consecutively with the publication last filed must be accompanied by a memorandum explaining why consecutive numbers were not used.

(d) Letter of transmittal. (1) All tariffs and supplements filed with the Commission shall be accompanied by a letter of transmittal of one sheet either 8 x 10 1/2 or 8 1/2 x 11 inches in size, in form substantially as follows:

_____
(Name of carrier or agent in full)

_____
(Post office address)
_____, 19_____.

Transmittal_____

To the Public Service Commission of Indiana, Indianapolis, Indiana 46204:

Accompanying publication is sent you for filing in compliance with the requirements of The Motor Carrier Act issued by_____and bearing P.S.C.I. No._____; or Supp. No._____ to P.S.C.I. No._____; or revised page to P.S.C.I. No._____; effective_____, 19_____; and is concurred in by all carriers named therein as participants under continuing concurrences or powers of attorney now on file with the Public Service Commission, except the following-named carriers, whose authorities are attached hereto:

_____
(Signature)

_____
(Title)

(2) A separate letter may accompany each publication or the form may be modified to provide for filing with one letter as many publications as can be conveniently listed.

(3) If receipt for the accompanying publications is desired, letters of transmittal must be sent in duplicate, and one copy showing the date of receipt by the Commission will be returned to the sender.

(e) Number of copies. (1) Carriers and agents shall transmit to the Commission three copies of each tariff, supplement, revised page, classification, or other publication to be filed, all copies to be included in one package and under one letter of transmittal. A separate letter of transmittal shall be included for each joint agent.

(2) No tariff, revised page, or supplement will be received by the Commission unless it is delivered to it free from all charges, including claims for postage.

(3) Tariffs sent for filing shall be addressed:

Public Service Commission of Indiana
Transportation-Tariff Dept.,
901 State Office Bldg.
Indianapolis, Indiana 46204

(4) Tariff publications received for filing will not be returned unless rejected because of failure to give lawful notice of changes, or for other valid reason.

(f) Statutory notice must be shown unless otherwise authorized. (1) Section 17 of the Motor Carrier Act requires that all changes in rates or charges, or in rules or other provisions that affect rates, shall be filed with the Commission at least 30 days before the date upon which they are to become effective unless otherwise authorized by the Commission. Manifestly it is impossible for the Commission to check the items in tariffs to determine whether or not statutory notice has been given. Therefore, except as otherwise authorized by the Commission, 30 days' notice to the public and to the Commission must be given as to every tariff publication filed with the Commission, regardless of whether or not changes are effected thereby.

(2) Rates, charges, rules, or other provisions which have been filed with the Commission must be allowed to become effective and remain in effect for a period of at least 30 days before being changed, cancelled, or withdrawn, unless otherwise authorized by the Commission.

(g) Filing of tariffs with Commission does not relieve carriers from liability for violation of act or regulations thereunder. (1) The law affirmatively imposes upon each carrier the duty of filing with the Commission and posting for public inspection all of its tariffs and amendments thereto in the manner prescribed in the law and in regulations promulgated by the Commission. A penalty is provided for failure to do so, or for using any rate which is not contained in its lawfully published and filed tariffs. The receipt and acceptance for filing of a tariff or supplement by the Commission does not relieve carriers from liability for violation of the act or of regulations issued thereunder.

(h) Posting of Tariffs. (1) Except as provided herein, each carrier by motor vehicle subject to the provisions of Section 17 of the Motor Carrier Act, and as amended, shall post and file at each of its stations or offices which is in charge of a person employed exclusively by the carrier or by it jointly with another carrier and at which freight is received for transportation all of the tariffs containing rates, charges, classifications, and rules or other provisions applying from, or at, such station or office.

(2) Except as provided herein each of such carriers shall also maintain at its principal or general office a complete file of all tariffs issued by it or by its agents, including those tariffs in which it concurs.

(3) Carriers operating only as pick-up carriers within the pick-up area at point of origin and carriers operating only as delivery carriers within the delivery area at point of destination who are shown as participating carriers in the tariffs naming rates from, to, or between such points will not be required to post such tariffs, provided the line-haul carrier with whom they interchange traffic maintains a terminal at the pick-up or delivery point, as the case may be, and posts such tariffs in accordance with this rule.

(4) The granting of authority to issue tariffs under powers of attorney or concurrences does not relieve the carriers conferring the authority from the necessity of complying with the Commission's regulations with regard to posting tariffs. Tariffs issued under such authority must be posted as required by the regulations in this paragraph.

(5) Each file of tariffs shall be kept in complete and accessible form. Employees of the carrier shall be required to give any desired information contained in such tariffs, to lend assistance to seekers of information therefrom, and to afford inquirers opportunity to examine any of such tariffs without requiring the inquirer to assign any reason for such desire.

(i) Rejection of tariffs and notices of revocation. (1) Any tariff tendered for filing, which fails to give lawful notice of changes in rates, charges or other provisions which it proposes to establish, or which fails to meet the requirements of the regulations contained in these rules, or violates any order of the Commission or of a court, is subject to rejection by the Commission. When a tariff is rejected, the Commission, acting through a designated administrative officer, will inform the carrier or the agent who tendered it for filing, in writing, of the reasons for rejection, and will return the rejected tariff to such carrier or agent.

(2) The number assigned to a tariff which has been rejected may not again be used. The rejected tariff may not be referred to in any subsequent tariff as having been cancelled, amended or withdrawn, but the tariff which is published in its stead must bear the following notation: "Issued in lieu of (here identify the rejected tariff), rejected by the Commission."

(3) A notice of the revocation, complete or partial or a concurrence or power of attorney which, if it were to become effective, would require the establishment of rates or charges in violation of an order of the Commission or of a court, or of the regulations in these rules, may be rejected in the same manner as a tariff, and any such notice of revocation which would require the establishment of rates or charges of doubtful lawfulness may be suspended. *(Department of State Revenue; No. 33034: Common Carrier Freight Tariffs and Classifications PT A, Rule 18; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 498) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-20) to the Department of State Revenue (45 IAC 16-3-20) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-21 Changes in rates; application for special permission

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 21. APPLICATIONS FOR SPECIAL PERMISSION. (a) Rates changed on less than statutory notice. Section 17 of the Motor Carrier Act, as amended, authorizes the Commission in its discretion and for good cause shown to permit changes in rates on less than statutory notice, and also to permit departure from the Commission's regulations. The Commission will exercise this authority only in cases where actual emergency and real merit are shown. Desire to meet the rates of a competing carrier that has given statutory notice of change in rates will not of itself be regarded as good cause for permitting changes in rates or other provisions on less than statutory notice. Clerical or typographical errors in tariffs constitute good cause for the exercise of this authority, but every application based thereon must plainly specify the error together with a full statement of the attending circumstances and must be presented with reasonable promptness after issuance of the defective tariff, supplement or revised page.

(b) Permission will not issue to modify formal orders. When a formal order of the Commission requires publication on a stated number of days' notice, a request for authority to file on less notice will not be granted. In any such instance a petition for modification of the order should be filed on the formal docket.

(c) Applications must be by carrier or agent authorized to file tariff. Applications for permission to establish rates, rules, or other provisions on less than statutory notice, or for waiver of provisions of these rules must be made by the carrier or agent that holds authority to file the proposed publication. If the application requests permission to make changes in joint tariffs, it must state that it is filed for and on behalf of all carriers parties to the proposed change.

(d) Number of copies. (1) Two copies of applications (including amendments thereto and exhibits made a part thereof) shall be sent to the Public Service Commission of Indiana, Transportation-Tariff Department, 901 State Office Bldg., Indianapolis, Indiana 46204.

(2) Application shall be made on paper either 8 x 10 1/2 or 8 1/2 x 11 inches, shall be in substantially the form shown herein below, and shall give all the information required by these rules, together with any other pertinent facts. They shall be numbered consecutively and must bear the signature of the carrier or its agent or officer, specifying title.

_____
(Address)

_____
(Date)

Application No._____

To The Public Service Commission of Indiana Indianapolis, Indiana 46204

_____, by _____ for and on behalf (Name of Carrier) (Name of officer, specifying title) of all carriers parties to its Tariff P.S.C.I. No._____, does hereby petition the Public Service Commission that he (it) be permitted, under Section 17 of the Motor Carrier Act, and as amended, to put in force the following tariff provisions to become effective _____ days after the filing thereof with the Public Service Commission:

(Here show matter as directed by paragraph (e)(1) of this rule *[this section]*.)

Your petitioner further represents that the said: (state whether rates, charges, classification ratings, or other provisions) above mentioned will be published in (here show matter as directed by paragraph (e)(2) of this rule *[this section]*).

(Here state matter as directed by paragraph (e)(3) of this rule *[this section]*.)

(Here state matter as directed by paragraph (e)(4) of this rule *[this section]*.)

(Here state fully matter as directed by paragraph (e)(5) of this rule *[this section]*.)

(Here show justification as directed by paragraph (e)(6) of this rule *[this section]*.)

_____
(Name of carrier)

By_____
(Name and title)

Verification:*

The above statement was subscribed and sworn to before me this _____ day of _____, 19_____.

_____
(Notary Public)

When the publication is made by an agent, appropriate change should be made in the introductory and closing paragraphs of this form.

* Only the original need be executed.

(e) Applications shall show. Applications shall show the following information:

(1) The proposed tariff provisions shall be set forth clearly and completely. An accompanying exhibit may be used if identified by letter, such as "Exhibit A," and so referred to in the application. If the proposed provisions consist of rates, all points of origin and destination must be shown or definitely indicated; if permission is sought to establish a rule, the exact wording of the proposed rule must be given.

(2) The application shall show the tariffs and P.S.C.I. numbers of the publications in which the proposed rates, ratings, rules or other provisions will be published. If publication is to be made in supplements to tariffs already referred to, this fact shall be shown.

(3) The application shall set forth the rates or tariff provisions which it is desired to change. Where the matter to be shown is voluminous or for other reasons difficult of presentation, it may be included in an accompanying exhibit, properly identified and referred to in the application. Reference shall be made by P.S.C.I. number and supplement number to the tariffs or supplements in which rates or provisions to be superseded are published. If such provisions are published in numbered items or other units, reference shall be made thereto by number, or, if not so published, the pages of the publication on which the provisions appear shall be shown. The extent to which cancellations will be made must be definitely indicated.

(4) The application shall state the names of carriers known to maintain competitive rates, charges, classification ratings, or rules between the same points or points related thereto, together with the P.S.C.I. No. TR- of the tariffs and supplements thereto containing such provisions.

(5) The application shall state whether such carriers have been advised of the proposed rates, charges, classification ratings, or rules and whether they have been advised that it is proposed to establish such provisions on less than statutory notice. If competitive carriers have expressed their views in regard to the proposed provisions, a brief statement of their views will be given.

(6) The application shall state the special circumstances or unusual conditions which are relied upon as justifying the requested permission together with any related facts or circumstances which may aid the Commission in determining whether the

requested permission is justified. If permission to establish provisions on less than statutory notice is sought, the petitioner shall state why the proposed provisions could not have been established upon 30 days' notice.

(f) Partial use of permission prohibited. If the authority granted by special permission is used, it must be used in its entirety and in the manner set forth in the order of special permission. If it is not desired to use all of the authority granted and less or more extensive or different authority is desired, a new application complying with the provisions of this rule in all respects and referring to the previous permission must be filed. *(Department of State Revenue; No. 33034: Common Carrier Freight Tariffs and Classifications PT A, Rule 19; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 501) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-21) to the Department of State Revenue (45 IAC 16-3-21) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-22 Powers of attorney; forms; authority conferred; revocation

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 22. POWERS OF ATTORNEY. (a) Forms of powers of attorney. (1) The following forms shall be used by a carrier to give authority to an agent to publish and file tariffs and supplements in which such carrier participates. (Existing powers of attorney which are not otherwise objectionable need not be reissued merely to comply with the prescribed form.)

(b) Corporation. This form shall be used to authorize a corporation to act as agent:

POWER OF ATTORNEY

P.S.C.I. M1 No._____
Cancels P.S.C.I. M1 No._____

_____
(Name of Carrier)

_____
(Post Office Address)

_____, 19_____

Know all men by this instrument:

That, on the _____ day of _____, 19_____, (see Note 1, paragraph (e)) carrier of property by motor vehicle does (do) hereby make and appoint _____ attorney and agent to publish and file for such carrier freight tariffs and supplements thereto, as permitted or required of common carriers of property by motor vehicle under authority of the Motor Carrier Act, and the regulations of the Public Service Commission of Indiana issued pursuant thereto, and does (do) hereby ratify and confirm all that said attorney and agent may lawfully do by virtue of the authority herein granted and does (do) hereby assume full responsibility for the acts and failure to act of said attorney and agent.

_____
(Name of Carrier)

By_____

Attest (If a Corporation):

_____, Secretary.

Duplicate mailed to_____, Agent.

_____

_____

(c) Unless specifically authorized by the Commission, an official or an employee of a corporation may not act as agent when such corporation acts as agent.

(d) Corporation, as agent. (1) A corporation, duly authorized and acting as an attorney and agent, shall issue tariffs in the name of the corporation as agent. At the bottom of the title page of each publication filed by the corporation as agent shall be shown the name and title of the official of the corporation who has been appointed by such corporation to issue tariffs and file them with the Commission.

(2) A corporation acting as a publishing agent under powers of attorney shall forward to the Commission a certified minute of the meeting of the board of directors of such corporation showing the name and title of the official who has been appointed to handle all tariff matters with the Commission.

(e) Individual. This form shall be used to authorize an individual to act as agent:

POWER OF ATTORNEY

P.S.C.I. M2 No._____
Cancels P.S.C.I. M2 No._____

_____
(Name of Carrier)

_____
(Post Office Address)

_____, 197_____

Know all men by this instrument:
That, on the _____ day of _____, 19_____,

_____
(See Note 1)

a common carrier of property by motor vehicle does (do) hereby make and appoint _____
(Name of principal agent)

attorney and agent to publish and file for such carrier freight tariffs and supplements thereto, as permitted or required of common carriers of property by motor vehicle under authority of the Motor Carrier Act and the regulations of the Public Service Commission of Indiana issued pursuant thereto, and does (do) hereby ratify and confirm all that said attorney and agent may lawfully do by virtue of the authority herein granted and does (do) hereby assume full responsibility for the acts and failures to act of said attorney and agent.

And, further, that_____ does
(See Note 1)

(do) hereby make and appoint _____ alternate attorney and agent to do and
(Name of Alternate Agent)

perform the same acts and exercise the same authority herein granted to _____ in the
(Name of principal agent)

event and only in the event of death or disability of _____
(Name of principal agent)

_____
(Name of Carrier)

BY _____

Attest (If a Corporation):

_____, Secretary

(Corporate Seal)

Duplicate mailed to _____, Agent.

_____

_____

NOTE 1: In the blank space for the name of the carrier, there shall be shown, if the carrier be an individual, the individual name followed by the trade name, if any. If the carrier be a partnership, the correct names of all partners must be given, followed by the trade name, if any. If the carrier be a corporation, the correct corporate name must be used. (See Note 2.)

NOTE 2: The power of attorney shall be signed by the individual carrier, if the carrier be an individual, and shall be signed by all of the partners individually, if a partnership. If the carrier be a corporation, the power of attorney shall be signed by the president or vice president, attested by the secretary of the corporation, and the corporate seal shall be affixed. In all cases, the name of the carrier shall be identical with the name as it appears in the certificate of convenience and necessity issued by the Commission, or, in the event that such certificate shall not have been issued, the name of the carrier shall be identical with the name appearing in the application for such certificate.

(f) Authority conferred. (1) Powers of attorney authorized by this rule, if executed without modification, confer unlimited authority to publish local rates for the carrier issuing the power of attorney and to publish joint rates for such carrier and such other carriers as shall have issued the necessary authority. If it is desired to limit the authority granted to the agent, the form may be modified by adding at the end of the first paragraph the statement: “This authority is restricted to the filing of the publications or types of publications set forth below,” and clearly stating immediately thereafter the extent of the authority granted. The instrument may limit the authority of the agent to publication of rates from points on the carrier's lines only, or to points on its lines only, or

may limit the authority granted to publication of either local or joint rates. The authority granted may be restricted, also, to publication of either class or commodity rates, but it may not be limited to publication of rates on a particular commodity or commodities or to publication of specifically named rates.

(2) If it is desired to give to an agent authority for the publication of a classification, a classification exceptions tariff or rules tariff only, the form may be modified by omitting from line six the words "freight tariffs" and substituting therefor the word or words, "classification," "classification exceptions tariffs" or "rules tariffs," or the instrument may be so modified as to authorize the publication of any or all of such tariffs, including rate tariffs. If it is desired to limit the authority granted to publication of a particular tariff or tariffs, this may be done by giving a sufficiently accurate description of the title page of each tariff to identify it and by showing the P.S.C.I. number, if known. If it is intended that the authority granted shall include supplements to or reissues of specifically named tariffs, that fact should be made clear by adding after the designation of the tariff, "supplements thereto and successive issues thereof."

(g) Specifications for powers of attorney. Powers of attorney shall be printed on good paper of durable quality, either 8 x 10 1/2 or 8 1/2 x 11 inches in size, and shall be signed as indicated in Note 2 Paragraph (e) of this rule. Each power of attorney shall be given a form and serial number which shall run consecutively for each form of instrument. The form and serial numbers shall be shown on the upper right-hand corner and immediately thereunder shall be shown the form and number of the power of attorney, if any, which is cancelled thereby. If the instrument to be cancelled contains more authority or is broader in scope than the new instrument, such new instrument must bear an effective date at least 60 days after the date on which it is received by the Commission. When the new instrument is broader in scope than the instrument which is to be cancelled, no notice is required. The term "freight tariff" as used in this rule means not only rate tariffs but all other freight publications which in any way affect the value of the service or the measure of the charge. Each instrument shall show, under the serial number, the post office address of the person or persons issuing it and the date of issue. The instrument shall show, also, in the lower left-hand corner, the name, title and address of the person or corporation to whom the duplicate is sent.

(h) Number of copies. All instruments must be prepared in triplicate. Except when there is specific instruction in individual rules to send originals to an agent, the original of the instrument shall be filed with the Commission, the duplicate sent to the agent to whom such authorization is directed, and the third copy retained by the issuing carrier.

(i) Conflicting authority to be avoided. Powers of attorney may not contain authority to delegate to another the power thereby conferred. In giving authority to an agent to publish and file rates for the carrier by whom such authority is issued, care must be taken to avoid duplicating to two or more agents authority which, if used, would result in conflicting rates or other provisions.

(j) Filing by alternate agent. When a power of attorney is issued to an individual to act as agent, such instrument shall name an alternate agent to act in the event of the death or disability of the principal agent. On or before the date of filing of the first tariff or supplement by the alternate agent under the authority granted in the instrument, such alternate agent shall submit to the Commission a sworn statement setting forth the facts which justify such exercise of authority. The term "disability," as used in the instrument means resignation, permanent transfer to other duties, or other permanent absence of the principal agent, and does not mean temporary absence of the principal caused by vacation, illness, or other similar causes. After an alternate agent has once exercised the authority granted by the instrument, the principal agent may not thereafter act under that instrument.

(k) Transfer of authority from one agent to another agent. (1) When it is desired to transfer authority from one agent to another agent, superseding the former agent as to all such agent's effective tariffs, the transfer shall be accomplished by filing a new power of attorney naming the agent (and alternate when the new agent is an individual) thereafter to serve, which shall specifically cancel the previous power of attorney. Under all other conditions the power of attorney must be revoked in accordance with paragraph (n) of this rule.

(2) When a power of attorney shall have been issued to an individual and an alternate, and the death or disability of either the principal or alternate agent occurs, new powers of attorney cancelling the previously effective powers of attorney and naming the agent (and alternate when the new agent is an individual) thereafter to serve shall be filed within 180 days. The new powers of attorney shall bear no effective date. The originals thereof shall not be sent direct to the Commission, but shall be forwarded to the new agent, who, after all the necessary instruments shall have been secured, shall file the originals with the Commission all at one time. Such powers of attorney will become effective upon the date they are received by the Commission.

(l) NOT USED.

(m) Substitution of agents. (1) When a new agent is appointed, or when an alternate agent assumes the duties of the principal agent, the new agent, immediately upon receipt of necessary authority, or the alternate agent, upon death or disability of his principal, shall issue a supplement to each of the effective tariffs issued by the agent superseded, which shall bear on its title page no effective date, but which shall contain a statement reading substantially as follows: "On and after (show here, in the case of a new agent, the

date on which authorities are filed with this Commission; or in the case of an alternate agent, the date on which the principal ceased to act) this publication shall be considered as the issue of (show here name of new agent or the alternate acting as such)." In the case of a new agent, such supplement shall also contain a list of participating carriers, giving reference to the new authorities. If tariffs issued by the new agent will be numbered in a different P.S.C.I. series from those of the former agent, supplements filed by the new agent to tariffs issued by the former agent shall show in connection with P.S.C.I. numbers, that they are in the series of the former agent.

(2) When an agent who is superseded by a new agent or alternate participates with other agents in the issuance of a joint agency tariff, a special supplement for the purpose of indicating the change need not be issued unless the agent superseded actually issues the tariff, but the information with respect to the change in agents and the list of carriers showing current powers of attorney shall be included in the next regular supplement issued.

(n) Revocation of power of attorney. A power of attorney may be revoked upon not less than 60 days' notice to the Commission by filing a notice of revocation with the Commission, serving at the same time a copy thereof on the agent in whose favor such power of attorney was executed. Such notice shall not bear a separate serial number, but shall specify the form and number of the power of attorney to be revoked, shall name the agent (and alternate agent when form P.S.C.I. M2 is being revoked) in whose favor the power of attorney was executed, shall specify a date upon which revocation is to become effective, which must not be less than 60 days subsequent to the date of its receipt by the Commission, and shall be executed in the following manner on paper of good quality, size either 8 x 10 1/2 or 8 1/2 x 11 inches:

REVOCATION NOTICE

_____
(Name of Carrier)

_____
(Post office address)

_____, 19_____

Know All Men by This Instrument:

Effective _____, 19_____, power of attorney P.S.C.I. No._____, issued by_____ in favor of_____ is hereby cancelled and revoked.

_____
(Name of Carrier)

By _____

Attest (if a corporation):

(Corporate Seal)

_____, Secretary

Duplicate mailed to _____
(Name of Agent)

_____
(Address)

_____
(Date)

(Department of State Revenue; No. 33034: Common Carrier Freight Tariffs and Classifications PT A, Rule 20; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 503) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-22) to the Department of State Revenue (45 IAC 16-3-22) by P.L.72-1988, SECTION 12, effective July 1, 1988.

45 IAC 16-3-23 Concurrences; forms; revocation

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 23. CONCURRENCES. (a) Forms of concurrences. The following forms shall be issued in giving to carriers subject to these rules concurrences in tariffs which are issued and filed by such carriers or their agents in which the carriers giving concurrences are participants. The provisions of Rule 20(g) and (h) will apply also to concurrences. If two or more carriers execute powers of attorney authorizing an agent to publish joint rates for them, it will not be necessary for those carriers to exchange concurrences with each other as to the joint tariffs issued by that agent under that authority.

(b) Specific. Form P.S.C.I. C1 shall be used in giving concurrrence in a particular tariff that is issued and filed by another carrier. The original of form P.S.C.I. C1 shall be forwarded to the carrier issuing the tariff and shall by such carrier be transmitted to the Commission with the tariff. This form when not restricted will serve as continuing evidence of participation in the tariff described in the concurrence and in all supplements to and successive issues thereof. If reference to successive issues be stricken out a new concurrence will be required for each successive issue of the tariff. Except as provided above, this form shall not be qualified in any way but must evidence concurrence in all rates, rules or other provisions contained in the tariff publication named therein.

CONCURRENCE

P.S.C.I. C1 No._____
Cancels P.S.C.I. C1 No._____

_____
(Name of Carrier)

_____
(Post office address)

_____, 19_____

To the Public Service Commission of Indiana, Indianapolis, Indiana 46204.

This is to certify that (show name of carrier giving concurrence; see Note 1, to Rule 20(e)) assents to and concurs in the publication and filing of the freight tariff described below, filed by (show name of carrier to whom concurrrence is given), together with supplements thereto and successive issues thereof, and that such concurring carrier hereby makes itself a party thereto and bound thereby, insofar as such tariff applies between points on the lines or routes of (show name of carrier to whom concurrence is given), on the one hand, and points on the lines or routes of (show name of carrier giving concurrence) on the other; or rates in connection with which (show name of carrier giving concurrence) acts as an intermediate carrier between points on the lines or routes of (show name of carrier to whom concurrence is given) on the one hand, and points on the lines or routes of other carriers parties to such tariff, on the other, until this authority is revoked by formal and official notice of revocation filed with the Public Service Commission of Indiana and sent to the carrier to which this concurrence is given. Here give an exact description of the title page of the tariff, including the name of the issuing carrier, the P.S.C.I. number, and dates on which issued and effective. Issued by (name and title of office shown as issuing tariff.)

_____
(Name of Carrier)

By_____

Attest (if a corporation):

_____

_____, Secretary.

(Corporate Seal)

(c) General. If general concurrence be given by a carrier in tariffs issued by another carrier or its agent, naming rates from or to points on its line or over its lines, form P.S.C.I. C2 shall be used. Form P.S.C.I. C2 may be executed as shown, when it will authorize publication of rates for the concurring carrier from and to points served by such carrier as well as from and to points served by other carriers where the concurring carrier acts as intermediate line. If it is desired to limit the authority granted to exclude publication of rates in connection with which the concurring carrier would act as either origin, intermediate, or destination line, the form may be modified to that extent by substituting the words “from-to” for words “between-and” or by use of other appropriate language to effect the modification authorized. When authority is given an agent to publish rates for a carrier participating under authority of a concurrence to another carrier, for whom such agent acts, care must be exercised that the rates published for the concurring carrier do not exceed the scope of the authority given.

CONCURRENCE

P.S.C.I. C2 No._____
Cancels P.S.C.I. C2 No._____

_____
(Name of the Carrier)

_____
(Post office address)

_____, 19_____

To the Public Service Commission of Indiana, Indianapolis, Indiana 46204.
This is to certify that (show name of carrier giving concurrence; see Note 1 to Rule 20(e)) assents to and concurs in the publication and filing of any freight tariff or supplement thereto, which (show name of carrier to whom concurrence is given) or such carrier's agent may publish and file, and in which the said (show name of concurring carrier) is shown as a participating carrier, and that such concurring carrier hereby makes itself a party thereto and bound thereby insofar as such tariff applies between points on the lines or routes of (show name of carrier to whom concurrence is given), on the one hand, and points on the lines or routes of (show name of carrier giving concurrence), on the other; or rates in connection with which (show name of carrier giving concurrence) acts as an intermediate carrier between points on the lines or routes of (show name of carrier to whom concurrence is given), on the one hand, and points on the lines or routes of other carriers parties, to such tariff, on the other, until this authority is revoked by formal and official notice of revocation filed with the Public Service Commission of Indiana and sent to the carrier to which this concurrence is given.

_____
(Name of Carrier)

By_____

Attest (if a corporation):

_____
(Corporate Seal)

_____, Secretary

Duplicate mailed to_____ at _____
(Show complete address)

(d) Revocation of concurrence. A concurrence may be revoked upon not less than 60 days' notice to the Commission by filing a notice of revocation with the Commission, serving at the same time a copy thereof on the carrier to which such concurrence was given. Such notice shall not bear a separate serial number, but shall specify the form and number of concurrence to be revoked, shall name the carrier in whose favor issued, and shall specify a date upon which revocation is to become effective, which must not be less than 60 days subsequent to the date of its receipt by the Commission. The revocation notice shall be as follows:

REVOCATION NOTICE

_____
(Name of Carrier)

_____
(Post office address)

_____, 19_____

To the Public Service Commission of Indiana,
Indianapolis, Indiana, 46204.
Effective_____, 19_____, concurrence form P.S.C.I. No._____, issued by _____ in favor
(Name of Carrier)
of _____ is hereby cancelled and revoked.
(Name of Carrier to whom issued)

_____
(Name of Carrier)

By_____

Attest (if a corporation):

_____
(Corporate Seal)

_____, Secretary.

Duplicate mailed to:

_____
(Name of title of officer)

_____
(Name of Carrier)

_____
(Address)

(e) Revision of tariffs when authority revoked. When a power of attorney or concurrence is revoked, corresponding revision of the tariff or tariffs should be made effective upon statutory notice not later than the effective date stated in the notice of revocation. In the event of failure to so revise the applicable tariff or tariffs, the rates in such tariff or tariffs remain applicable until lawfully cancelled.

(f) Conflicting authority to be avoided. In giving concurrences care must be taken to avoid duplication authority to two or more carriers which, if used, would result in conflicting rates or rules. *(Department of State Revenue; No. 33034: Common Carrier Freight Tariffs and Classifications PT A, Rule 21; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 509) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-23) to the Department of State Revenue (45 IAC 16-3-23) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-24 Suspension supplements and postponement notices; forms

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 24. SUSPENSION SUPPLEMENTS AND POSTPONEMENT NOTICES. (a) All carriers subject to the tariff publishing rules in this Part (PART A) and their duly appointed agents are hereby authorized to:

(1) Publish the following provisions in the supplements (other than consolidated suspension supplements) to their respective tariffs announcing suspension of rates or other provisions of said tariffs:

POSTPONEMENT NOTICE.

If this supplement is not cancelled on or before (here insert date to which suspended), the effective date of the above-described suspended publication or publications remaining under suspension until that date is hereby postponed to the date upon which this supplement is cancelled. The rates, charges, classifications, rules, regulations, practices, and other provisions continued in force by the above-mentioned order of suspension will apply during the period of suspension and postponement unless and until lawfully changed.

(2) Publish in bound tariffs or supplements thereto, or in loose-leaf tariffs or pages thereto, immediately following the first sentence of the "Notice of Suspension" a postponement notice reading substantially as follows:

The effective date of such suspended provisions is hereby postponed to and including_____

or

The effective date of such suspended provisions which was postponed to and including_____ is hereby further postponed to and including_____.

All such provisions to be made effective not later than the date to which suspended or postponed and upon as much notice as possible, but in no event less than 1 day's notice.

(b) Where the supplement announcing suspension does not contain postponement notice authorized in Paragraph (a) (1) of this rule *[this section]* and some or all of the matter remains under suspension until the end of the suspension period, carriers and their agents are hereby authorized to issue a postponement notice in regular supplement or a postponement supplement to provide that the effective date of such matter remaining under suspension is postponed to a specific date or to the date upon which the postponement notice or postponement supplement is cancelled. The supplement containing such postponement notice to provide for the cancellation of the suspension supplement, shall bear an effective date which will be the same date as that named in the suspension order and to be made effective upon as much notice as possible, but in no case less than 1 day's notice.

(c) Where the suspended matter is under postponement to a specific date under authority of Paragraph (b) of this rule *[this section]* and it is desired to further postpone the effective date, carriers or agents may issue a supplement to their tariff or schedule affected, such supplement to cancel the postponement supplement (if it contains only the notice of postponement) or the postponement notice (if in a supplement containing other matter) and to provide that the effective date of the matter remaining under postponement to the end of the postponement period, is further postponed to a specific date or to the date upon which the postponement supplement or postponement notice is cancelled. The postponement notice or supplement issued hereunder to be made effective not later than the date shown in the previous postponement notice and upon as much notice as possible but in no case less than 1 day's notice.

(d) When the Commission has found the suspended matter justified and the effective date of such matter is under postponement or further postponement, the publishing carrier or agent may within the period of postponement publish and file a supplement (when to a bound tariff) or revised page (when to a loose-leaf tariff) to their tariff affected, such supplement or page to cancel the postponement notice or postponement supplement (in the case of loose-leaf tariff the postponement supplement may

be cancelled by a revised check sheet), cancel the matter continued in effect during the period of postponement and make the postponed matter effective, the supplements or pages issued under this paragraph to bear an effective date which will be earlier than the date to which postponed and be made effective upon not less than 1 day's notice.

(e) Supplements issued to bound tariffs under authority of Paragraphs (b), (c), and (d) of this rule *[this section]* which contain no other matter may be issued without regard to the terms of Rule 6(d) (1) and (2) of these regulations, but thereafter such supplements will be counted against the number of supplements and volume of supplemental matter until they are cancelled.

(f) Publications issued hereunder to make specific reference hereto as authority for short notice filing or for tariff circular departure by using the following notation wholly or in part:

Issued on (show number of days) notice; Tariff Circular departure authorized.

This authority does not, except as expressly indicated, waive or modify any outstanding formal order of the Commission, any of the requirements of its published rules relative to the construction and filing of the tariffs nor any of the provisions of the Motor Carrier Act.

(Department of State Revenue; No. 33034: Common Carrier Freight Tariffs and Classifications PT A,Rule 22; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 512) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-24) to the Department of State Revenue (45 IAC 16-3-24) by P.L.72-1988, SECTION 12, effective July 1, 1988.

45 IAC 16-3-25 Emergency rates and other tariff provisions

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 25. MOTOR COMMON CARRIERS OF PROPERTY; ESTABLISHMENT OF RATES, ETC., COVERING EMERGENCY MOVEMENTS OF PROPERTY. (a) Subject to the limitations herein, motor common carriers of property may establish rates and other tariff provisions covering emergency movements of property under Section 28a of the Motor Carrier Act, without further notice prior to acceptance of shipments for transportation other than posting, where required, of an individual tariff publication (not a loose-leaf page), containing such rates, and other tariff provisions, and having four copies of the publication, with a letter of transmittal, filed with the Commission.

(b) Additional departure from the terms of PART A. Motor common carriers of property may depart from the terms of PART A to the extent necessary to permit the filing of tariff publications in the manner authorized in the foregoing paragraph hereof.

(c) Limitations. (1) This permission does not authorize the cancellation of any rate or provision on the same commodity between the same points and may not be used to establish rates and other provisions which will result in duplicating or conflicting rates, except as authorized in subparagraph (5) of this paragraph.

(2) Tariffs filed hereunder must be consecutively numbered in the carrier's "ET" series in the following manner:

P.S.C.I. No. ET-

(3) Tariffs filed hereunder may contain only the rates, rules, and other provisions covering the movement of property under emergency temporary authority and then only for a period of not more than 30 days and such tariffs may not contain other rates or provisions.

(4) All tariffs filed hereunder must bear a specific expiration date which will not be later than the date upon which the emergency temporary authority expires.

(5) When it has been discovered that provisions of the "ET" series tariff do not conform to emergency temporary authority actually granted, another tariff, in the carrier's "ET" series, may be filed in accordance with this section to cancel the first and conform tariff provisions to the operating authority.

(6) Supplements to "ET" series tariffs are permissible only for the purpose of changing, specifically, the expiration date of the tariff to a date not later than the date upon which the emergency temporary authority, or an extension thereof, expires.

This permission does not modify any outstanding formal order of the Commission, nor waive any of the requirements of its published rules relative to the construction and filing of tariff publications, except as herein authorized, nor modify any of the provisions of Section 28a of the Motor Carrier Act, except as to notice. *(Department of State Revenue; No. 33034: Common Carrier Freight Tariffs and Classifications PT A, Rule 23; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 514) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-25) to the Department of State Revenue (45 IAC 16-3-25) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-26 Contract carrier freight tariffs; compliance with regulations; reissuance of schedule or power of attorney

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 26. SCHEDULES OF MOTOR CONTRACT CARRIERS OF PROPERTY. All schedules and supplements thereto filed by contract carriers of property by motor vehicle and agents on or after Jan. 1, 1973, unless otherwise authorized by special permission of the Commission, shall conform to these regulations (Part B).

The Commission may reject any schedule or supplement thereto which does not comply with these regulations.

The Commission may, for reasons deemed sufficient, direct the reissue of any schedule or power of attorney at any time. *(Department of State Revenue; No. 33034: Schedules of Rates by Motor Vehicles In Intrastate Commerce PT B; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 515) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-26) to the Department of State Revenue (45 IAC 16-3-26) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-27 Definitions

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 27. DEFINITIONS. Except where the context indicates otherwise:

(1) The term "Act" means the Motor Carrier Act, 1935, as amended, of the State of Indiana.

(2) The term "Commission" means the Public Service Commission of Indiana.

(3) The term "contract carrier" means a contract carrier of property as defined in Section 2 of the Act.

(4) The term "rates" means actual rates and charges or minimum rates and charges.

(5) The term "schedule" means a publication stating rates of a contract carrier or rules and other provisions applicable in connection with those rates, or a publication containing rates together with such rules and other provisions. *(Department of State Revenue; No. 33034: Schedules of Rates by Motor Vehicles In Intrastate Commerce PT B; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 515) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-27) to the Department of State Revenue (45 IAC 16-3-27) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-28 Waiver of regulations; rejection or reissuance of schedules

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 28. WAIVER OF RULES; REJECTION OF SCHEDULES. (a) Waiver of rules. In response to an application which has been prepared in the manner outlined in Rule 4 and which provides adequate justification for that action, the Commission in its discretion may authorize the waiving of any of these regulations, or the notice requirements of the Act.

(b) Rejection of schedules. Any schedule tendered for filing which fails to give lawful notice of the change in rates, or other provisions which it proposes to establish, or which fails to meet the requirements of these regulations, or which violates any order of the Commission or of a court, is subject to rejection by the Commission. When a schedule is rejected, the Commission, acting through a designated administrative officer, will inform the carrier who tendered it for filing, in writing, of the reasons for rejection and will return the rejected schedule to that carrier.

(c) Commission may direct reissue. For good cause the Commission may at any time without formal hearing direct the reissue of any schedule. *(Department of State Revenue; No. 33034: Schedules of Rates by Motor Vehicles In Intrastate Commerce PT B,Rule 1; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 515) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-28) to the Department of State Revenue (45 IAC 16-3-28) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-29 Publication, notice of filing and posting of schedules

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 29. PUBLICATION, FILING AND POSTING OF SCHEDULES. (a) Contract carriers must file schedules. Except as otherwise provided in these regulations and except to the extent that the Commission grants relief from the requirements of the Act

for filing schedules every contract carrier shall publish and file in its own name schedules clearly and explicitly stating minimum rates and charges (see Note A) covering the services which it performs, together with rules, regulations and practices affecting those rates and charges or the value of the service thereunder.

NOTE A–Rates shall be stated in cents or in dollars per 100 pounds, per mile, per hour, per ton of 2,000 pounds, per ton of 2,240 pounds, per truckload of specified amount or per other defined unit.

(b) Agency or joint schedules prohibited. A contract carrier may not participate in a tariff or schedule issued by another carrier or by an agent except that it may participate under power of attorney in an agency publication containing highway distances, in an agency publication containing rate basis numbers, and in an agency publication containing the Hazardous Materials Regulations promulgated by the Department of Transportation to govern the transportation of explosives or other dangerous articles. (See Rule 3.)

(c) Number of copies filed. Issuing carriers shall file with the Commission three (3) copies of each schedule, supplement, or revised page of a schedule, and for the Commission's confidential file, one copy of each contract. All copies shall be included in one package accompanied by a letter of transmittal (in duplicate if a receipt is desired) listing the publications enclosed, which shall be addressed to the Public Service Commission of Indiana, Transportation Tariff Bureau, 901 State Office Building, Indianapolis, Indiana 46204. Such letter of transmittal must give a full and detailed explanation of the reason or reasons for such changes of rates or rules. All postage and other charges must be Prepaid. The Commission may decline to accept for filing any publication which is not accompanied by a letter of transmittal.

(d) Letters of Transmittal. (1) Each letter of transmittal shall be on paper either 8 x 10 1/2 inches or 8 1/2 x 11 inches in size and in form substantially as follows:

_____ (Correct Name of Carrier)
_____ (Permit or Docket No.)
_____ (Complete Address)
_____ (Date)

Transmittal No._____

The accompanying contract carrier schedule is sent to you for filing in compliance with the requirements of the Motor Carrier Act, issued by_____, and bearing P.S.C.I. No. _____; or Supplement No. _____ to P.S.C.I. No. _____ effective _____.

The following contracts or amendments to contracts with shippers for the transportation of property are sent to you for filing in compliance with the Regulations of the Commission.

_____	_____
Name and address of shipper	(Effective date of contract)
_____	_____
Name and address of shipper	(Effective date of contract)
_____	_____
Name and address of shipper	(Effective date of contract)

Signed_____
Title_____

(2) Each letter of transmittal shall bear the signature of the person issuing the schedule, except that it may bear the signature of the carrier's representative authorized to file schedules with the Commission, provided that a letter of authorization in the form set forth in this subparagraph accompanies the letter of transmittal or has been previously submitted and is effective in the Commission's files. A carrier may have in effect in the Commission's files at any time, one, and only one, such letter of authorization. The Commission may decline to accept for filing any schedule not accompanied by a properly signed letter of transmittal.

LETTER OF AUTHORIZATION TO FILE SCHEDULES
OF CONTRACT CARRIERS

_____
(Complete name of carrier)
Permit or Docket No._____
_____
_____
(Complete Address)
Date_____
TO THE PUBLIC SERVICE COMMISSION

OF INDIANA
901 STATE OFFICE BUILDING
INDIANAPOLIS, INDIANA 46204

This is to certify that _____

(Name and address of individual authorized to act)

is hereby authorized to sign letters of transmittal and transmit to the Commission thereunder for filing in compliance with the Motor Carrier Act, as amended, schedules and supplements thereto issued in the name and P.S.C.I. series of the carrier named herein, and contracts or amendments to contracts.

All such schedules and supplements are to be considered the official filings of the carrier named herein when tendered for filing by the individual named in the first paragraph hereof.

Name of Carrier_____
By_____

Verification:

The above statement was subscribed and sworn to before me this _____ day of_____, 19_____.

_____
Notary Public

(3) A separate letter of transmittal may accompany each schedule and each contract or the form may be modified to provide for filing with one letter as many schedules, supplements to schedules and contracts or amendments to contracts as can be conveniently listed. If receipt for the schedules or contracts is desired, letters of transmittal must be sent in duplicate and one copy showing the date of receipt by the Commission will be returned to the sender.

(e) Notice of filing. (1) Each new rate or charge and each reduced rate or charge, also each new or changed rule, regulation or practice which effects a reduction in rates or charges or which increases the value of the service shall be published in a schedule which shall be posted and filed with the Commission at its office, at least 30 days prior to the effective date of such rate, charge, rule, regulation or practice.

(2) Increased rates or charges and changes in rules, regulations, or practices which effect a decrease in the value of service or increase in a rate or charge, and rates, charges, rules, regulations or practices republished without change, shall be published in a schedule which shall be posted and filed with the Commission at least one day prior to the effective date of such rates, charges, rules, regulations, or practices. See Rule 3(g) and Rule 4.

(f) Schedules must be supported by a true copy of each related contract. A schedule shall not be published and filed to apply on any commodity or from or to any point or for any service not covered by contract filed with this Commission; unless it is accompanied and supported by a true copy of a contract or an amendment to a previously filed contract.

(g) Posting of schedules. At its headquarters or general offices every contract carrier shall keep available for public inspection a complete file of all its effective schedules. Upon request assistance shall be furnished to anyone seeking information from those schedules. *(Department of State Revenue; No. 33034: Schedules of Rates by Motor Vehicles In Intrastate Commerce PT B,Rule 2; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 515) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-29) to the Department of State Revenue (45 IAC 16-3-29) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-30 Form and content of schedules

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 30. FORM AND CONTENT OF SCHEDULES. (a) Form of schedule. A schedule shall be filed in a book, loose-leaf or pamphlet form. It shall be plainly printed, mimeographed, planographed, stereotyped, or reproduced by other durable process on paper of good quality. Typewritten, photostat, hectograph, or proof sheets will not be accepted for filing. A schedule shall be either 8 x 11 inches or 8 1/2 x 11 inches (a supplement must be the same size in length and width as the schedule it amends). It shall contain no alteration or erasure. A margin of not less than five-eighths of an inch with no printing thereon shall be provided on the bonding edge of each page. Schedules filed in loose-leaf form shall comply with all provisions set forth in PART A of these regulations pertaining to the filing of tariffs by motor common carriers. (See Rule 1(e) and Rule 7(f) of PART A.)

(b) Numbering of schedules. Schedules other than supplements shall bear consecutive P.S.C.I. numbers beginning with P.S.C.I. No. 1 or continuing with the next consecutive P.S.C.I. number in the same series of schedules.

(c) Number assigned to a rejected schedule. The number assigned to a schedule which has been rejected may not be used

again. The rejected schedule may not be referred to in any subsequent schedule as having been cancelled, amended or withdrawn, but the schedule published in its stead shall bear the following notation:

Issued in lieu of (here identify the rejected schedule by P.S.C.I. number or supplement number) rejected by the Public Service Commission of Indiana.

(d) Title page. The first (front or top) page of a schedule shall be prepared as a title page showing in the upper right-hand corner its P.S.C.I. number and immediately thereunder notice of cancellation identifying by number any schedule or schedules being cancelled thereby.

(e) Name of carrier. On the upper central part of the title page shall appear the exact complete name of the issuing carrier and the number of the permit, or if no permit has been issued, the docket number assigned to the application.

(f) Application of schedule. Below the carrier's name and permit or docket number shall be shown following the words "Contract Carrier Schedule of Minimum Rates and Charges Applying On," a short specific description of the commodity or commodities covered by the schedule (or the word "Commodities" where the articles covered are too numerous to list); and a brief description of the territories within which or point from, to, or between which the schedule applies.

(g) Issue and effective dates. On the lower left-hand side of the title page shall be shown the date of issue and on the lower right-hand side the date on which the schedule is to become effective. Schedules which contain new or changed rates or other provisions effective on more dates than one shall show a general (title page) effective date not earlier than 30 days subsequent to the date on which the schedule is filed with the Commission, followed by a notation reading substantially as follows: "Except as otherwise provided on page (here give reference to the page or pages on which new or changed rates or other provisions are shown as becoming effective on dates other than the general effective date of the schedules)."

(h) Issuing officer. At the bottom of the title page below the issued and effective dates shall be shown the name, title, and mail address of the owner, partner, representative or officer of the carrier by whom the schedule is issued. The title "agent" may not be used.

(i) Table of contents. Immediately after title page shall be published a table of contents arranged in alphabetical order to indicate the page on which each subject is treated. If the schedule contains so small a volume of matter that its title page and interior arrangement plainly disclose its contents, the table of contents may be omitted.

(j) Index of Commodities. (1) Next shall be provided a complete alphabetical index of commodities indicating the number of the page on which rates or charges on each commodity will be found.

(2) If all of the commodity rates to each destination in a schedule are arranged in alphabetical order by commodities, the index of commodities may be omitted from that schedule.

(k) Index of points. Following the index of commodities a schedule naming rates or charges from, to, or between specific points shall publish an index showing those points, and the page or pages on which each point is named. If there be not more than 12 points of origin or 12 points of destination, the names of such points may, if practicable, be shown in alphabetical order in the schedule, in which event the index of points of origin or destination, or both, as the case may be, may be omitted.

(l) Rules. Rules and other provisions affecting rates and charges shall be published following the index of points. Each rule and other governing provision must be designated as an "item," and given a separate "item" number; portions which can be understandingly read without recourse to the whole and "exceptions" to the general application of a rule or other such provision may be published in separate paragraphs and such paragraphs may be given subnumbers or letters.

(m) Rate tables. (1) Rate tables shall show rates and shall name the commodities on which the rates apply or make reference to pages or items listing those commodities. When rate tables refer to lists of commodities, such lists of commodities shall be shown immediately preceding the rate tables and following the rules and other provisions required by paragraph (1) of this rule. Rate tables shall also show points of origin and points of destination. Insofar as practicable such points shall be shown alphabetically.

(2) Rate tables should be subdivided into small sections called "Items," and each should be given a separate "Item" number.

(n) Designation of commodity or article. When a rate is established or modified, the designation of the commodity or articles in connection with which the new or changed provision is to apply must be aptly descriptive; also, it must be sufficiently explicit to preclude conflicting or duplicating applications and to show clearly the articles which it embraces.

(o) Multiple minimum-quantity rates. Different rates based on different minimum quantities may be published provided the schedule shows clearly in connection with such provisions whether the lowest charge obtainable under the different rates and minimums applicable thereto (or actual quantities, if greater) will be applied, or whether the provisions will be applied in some different, explicitly stated manner.

(p) Mixed shipments. Rates may be established on different articles for mixed quantity shipments. Minimum quantities should be specified together with a statement in connection with the commodity description that the rates apply on mixed quantity

shipments. Such rates may also be made applicable upon straight shipments of one or more or all of the articles by a provision to that effect in connection with the commodity description. When more than one article is included in an item or commodity description, the schedule should state whether or not the rates apply on straight or mixed shipment or both.

(q) Changes must be indicated. Schedules must indicate any change thereby made in existing rates or rules, regulations, practices or other provisions by use of the reference marks specified for the purpose in paragraph (r) of this rule.

(r) Uniform reference marks. All schedules shall indicate changes made in existing rates, rules, regulations, practices or other provisions by use of the following uniform symbols in connection with those changes.

● or (R) to denote reductions.

◆ or (A) to denote increases.

▲ or (C) to denote changes which result in neither reductions nor increases in charges.

(s) Explanation of abbreviations and reference marks. At the end of each schedule there shall appear an Explanation of Abbreviations, followed by an Explanation of Reference Marks. Under the Explanation of Abbreviations shall appear an explanation of all abbreviations used in the schedule, except that commonly used abbreviations of parts of names of companies, places or addresses may be omitted. Under the Explanation of Reference Marks shall appear an explanation of all characters, symbols, or reference marks used in the schedule, except reference marks, characters or symbols which are explained on the page or pages of the schedule on which they appear.

(t) Distance rates. Schedules carrying rates dependent on mileages or distances for their application shall publish those distances between points or provide a definite method for determining them.

(u) Supplements. A change in or addition to a schedule shall be known as an amendment, and shall be published in a supplement. Supplements shall be numbered consecutively and shall carry the same P.S.C.I. number as the schedule amended. Each supplement shall specify on its title page the supplement or supplements or schedule which it cancels, and shall also list by their numbers the supplements containing effective changes from matter published in the originally filed schedule. The matter contained in each supplement shall be arranged in the same general manner and order as the schedule which it amends. The following is the maximum number of effective supplements permitted to any one schedule:

16 pages or less . . . . . 2 supplements.
17 pages or more . . . . . 3 supplements.

In addition to the above, schedules of 17 or more pages may have one additional supplement of not exceeding 4 pages. Supplements announcing adoptions or suspension effected by orders of the Commission will not be counted in computing the allowable number of supplements.

(v) Explosive and dangerous articles. Schedules which contain rates for the transportation of hazardous materials must also contain the rules and regulations promulgated by the Department of Transportation governing the transportation thereof, or must bear specific reference to the P.S.C.I. number of a separate publication which contains such rules and regulations.

(w) Item amendment. When an amendment (such as a change, cancellation, addition or deletion) is made in a numbered item, such item shall be published in the supplement in its entirety as amended. The revised item showing the amended provision should be given the same item number with a letter suffix; for example: Item 40-A Cancels Item 40; Item 40-B Cancels Item 40-A; and so on. When any rate or other provision contained in an item designated by an item number is amended, resulting in the cancellation of all or a portion thereof, the canceled matter shall not be reproduced in the new item effecting the cancellation except to the extent necessary to identify the item. *(Department of State Revenue; No. 33034: Schedules of Rates by Motor Vehicles In Intrastate Commerce PT B,Rule 3; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 518) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-30) to the Department of State Revenue (45 IAC 16-3-30) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-31 Changes in rates; application for special permission

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 31. APPLICATIONS FOR SPECIAL PERMISSION. (a) Reductions in rates and charges and establishment of new rates and charges on less than statutory notice; waiver of requirements of these regulations. The Act authorizes the Commission in its discretion and for good cause shown to permit reductions in or the establishment of new rates or charges on less than statutory notice, and also to permit departure from the Commission's regulations. This authority will be exercised only in cases where actual emergency and real merit are shown. Commercial competition or the desire to meet the rates of a competing carrier that has given

statutory notice for reduced rates or for the establishment of new rates and charges will not of itself be regarded as cause for permitting changes in rates or other provisions on less than statutory notice. Clerical or typographical errors in schedules constitute good cause for the exercise of this authority, but every application based thereon must plainly specify the error, together with a full statement of the attending circumstances and must be presented with reasonable promptness after publication of the defective schedule.

(b) Form of application. Applications shall be submitted in duplicate on paper either 8 x 11 inches or 8 1/2 x 11 inches in substantially the form set forth in this paragraph and shall furnish all pertinent information. They should be numbered consecutively and must bear the signature and title of the owner or of an officer or duly authorized representative of the carrier.

_____
(Address)

_____
(Date)

TO THE PUBLIC SERVICE COMMISSION OF INDIANA
901 STATE OFFICE BUILDING
INDIANAPOLIS, INDIANA 46204
APPLICATION NO._____
_____, by_____
(Name of Carrier)

_____
(Name of officer, specifying title)

does hereby petition the Public Service Commission of Indiana that he (it) be permitted, under Section 18 of the Act, to put in force the following provisions to become effective _____days after the filing thereof with the Public Service Commission.

(Here show matter as directed by Paragraph (d) of Rule 4 *[this section]*.)

Your petitioner further represents that the said (state whether rates, charges, or other provisions) above mentioned will be published in (here show matter as directed by paragraph (e) of Rule 4 *[this section]*.)

(1) (Here state matter as directed by Paragraph (f) of Rule 4 *[this section]*.)

(2) (Here state matter as directed by Paragraph (g) of Rule 4 *[this section]*.)

(3) (Here show justification as directed by Paragraph (h) of Rule 4 *[this section]*.)

_____
(Name of Carrier)

By_____
(Name and title)

Verification:

The above statement was subscribed and sworn to before me this _____ day of _____, 19_____.

_____
(Notary Public)

(c) Partial use of authority prohibited. The authority granted by special permission, if used, must be used in its entirety and in the manner set forth in the order of special permission. If it is not desired to use all of the authority granted, and less or more extensive or different authority is desired, a new application complying with the provisions of this rule in all respects and referring to the previous permission must be filed.

(d) Proposed provisions. The proposed provisions shall be set forth clearly and completely in the Application. An accompanying exhibit may be used if identified by letter, such as "Exhibit A," and so referred to in the application. If the proposed provisions consist of rates, all points of origin and destination must be shown or definitely indicated; if permission is sought to establish a rule, the exact wording of the proposed rule must be given.

(e) P.S.C.I. numbers to be shown. The application shall show P.S.C.I. numbers of the schedules in which the proposed rates, rules or other provisions will be published. If publication is to be made in schedules already referred to, that shall be stated.

(f) Rates desired to be changed. The application shall set forth the rates or provisions which it is desired to change. Where the matter to be shown is voluminous or for other reasons difficult of presentation, it shall be included in any accompanying exhibit, properly identified and referred to in the application. Reference shall be made by P.S.C.I. number, supplement number and item or page number to the schedules in which rates or provisions to be superseded are published. The extent to which cancellations will be made must be definitely indicated.

(g) Carriers, schedule or tariff numbers, notifications, advisements and objections. Where changes in rates or practices or where new rates or practices are proposed, applications should name the carriers, and specify by P.S.C.I. or I.R.C. number the schedules or tariffs maintaining corresponding rates or other provisions. Applications should also state whether those carriers have been notified of the application, including any short-notice features. Applications to establish on less than thirty days' notice schedules to cover temporary operating authority granted under the authority of Section 28a of the Act should show that common carriers or their tariff publishing agents as well as contract carriers maintaining corresponding rates or other provisions have been advised of the proposals. All applications shall state what objections or other views have been expressed by the carriers so notified. The Commission must obtain information of the types mentioned before acting upon requests for tariff-circular relief or short notice; and applications will be handled with materially more speed when the carriers in filing their applications are careful to furnish the facts requested.

(h) Special circumstances. Applications shall state the special circumstances or unusual conditions relied upon as justifying the requested permission, together with any related facts or circumstances which may aid the Commission in determining whether the requested permission is justified. If permission to establish provisions on less than statutory notice is sought, the petitioner shall state why the proposed provisions could not have been established upon thirty days' notice. *(Department of State Revenue; No. 33034: Schedules of Rates by Motor Vehicles In Intrastate Commerce PT B,Rule 4; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 522) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-31) to the Department of State Revenue (45 IAC 16-3-31) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-32 Powers of attorney; forms; revocation

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 32. POWERS OF ATTORNEY. (a) Forms. (1) The forms set forth in this rule shall be used by a contract carrier of property to give authority to an agent to publish distance tariffs and supplements thereto or tariffs and supplements thereto naming the hazardous materials regulations as promulgated by the Department of Transportation to govern the transportation of explosives and other dangerous articles. See Rule 2(b).

(2) Powers of attorney shall be printed or typed on paper of good quality, either 8 x 11 or 8 1/2 x 11 inches in size. Each power of attorney shall be given a serial number which shall run consecutively for each form of instrument.

(b) Individual acting as agent. This form shall be used to authorize an individual to act as agent:

POWER OF ATTORNEY

P.S.C.I. M3 No._____
Cancels P.S.C.I. M3 No._____

_____
(Name of Carrier)

_____
(Post Office Address)

_____, 19_____

Know all men by this instrument:

That (Name of granting carrier–see paragraph (d) of Rule 5,) a contract carrier of property by motor vehicle, does (do) hereby make, constitute and appoint (Name of principal agent) attorney and agent to publish and file for such carrier (Here specify affirmatively the precise authority given to the agent; that is, either distance tariffs and supplements thereto or tariffs and supplements thereto naming rules and regulations as promulgated by the Department of Transportation to govern the transportation of hazardous material) as permitted or required of contract carriers by motor vehicle under the authority of Department of Transportation issued pursuant thereto and does (do) hereby ratify and confirm all that said attorney and agent may lawfully do by virtue of the authority herein granted and does (do) hereby assume full responsibility for the acts and failures to act of said attorney and agent.

And, further, that (Name of granting carrier–see paragraph (d) of Rule 5) does (do) hereby make and appoint (Name of alternate agent) alternate attorney and agent to do and perform the same acts and exercise the same authority herein granted to (Name of principal agent) in the event and only in the event of the death or disability of (Name of principal agent).

_____
(Name of Carrier)

By_____
(See paragraph (e), Rule 5)

Attest (If a corporation):

_____, Secretary.

(Corporate Seal)

Duplicate mailed to _____, Agent.

_____

_____

(c) Corporation or association acting as agent. This form shall be used to authorize a corporation or association (see paragraph (g) of this rule) to act as agent:

POWER OF ATTORNEY

P.S.C.I. M4 No._____
Cancels P.S.C.I. M4 No._____

_____
(Name of Carrier)

_____
(Post Office Address)

_____, 19_____

Know all men by this instrument:

That (Name of granting carrier–see paragraph (d) of Rule 5), a contract carrier of property by motor vehicle, does (do) hereby make, constitute and appoint (name of agent) attorney and agent to publish and file for such carrier (Here specify affirmatively the precise authority given to the agent; that is, either distance tariffs and supplements thereto or tariffs and supplements thereto naming rules and regulations as promulgated by the Department of Transportation to govern the transportation of hazardous materials) as permitted or required of contract carriers by motor vehicles under the authority of Department of Transportation issued pursuant thereto and does (do) hereby ratify and confirm all that said attorney and agent may lawfully do by virtue of the authority herein granted and does (do) hereby assume full responsibility for the acts and failures to act of said attorney and agent.

_____
(Name of Carrier)

By_____
(See paragraph (e), Rule 5)

Attest (If a corporation:

_____, Secretary.

(Corporate Seal)

Duplicate mailed to _____, Agent.

_____

_____

(d) Full and correct carrier name to be shown. In the space for the name of the carrier in Power of Attorney Forms, there must be shown, if the carrier is an individual, the individual name followed by the trade name, if any. If the carrier is a partnership, the correct names of all partners must be given, followed by the trade name, if any. If the carrier is a corporation, the correct corporate name must be used. (See paragraph (e) of this rule.) In all cases, the name of the carrier must be identical with the name as it appears in the permit issued by the Commission.

(e) Persons who may sign powers of attorney. If the carrier is an individual, the power of attorney must be signed by the individual. If a partnership, the power of attorney must be signed individually by each partner. If the carrier is a corporation, the power of attorney must be signed by the president or vice-president, attested by the secretary of the corporation, and the corporate seal shall be affixed.

(f) Type of publication to be specified. The power of attorney shall specify whether the agent designated therein shall publish a distance tariff or a tariff of rules and regulations governing the transportation of explosives and other dangerous articles, or both.

(g) Agents, who may be. Agents may be natural persons, corporations, or unincorporated associations whose articles of association (or other form of agreement) have been approved by the Commission. An officer or employee of an incorporated tariff publishing agent may not act as agent in his individual capacity for the publication of tariffs.

(h) Revocation of powers of attorney. A power of attorney may be revoked upon not less than sixty days' notice to the Commission by filing a notice of revocation with the Commission, serving at the same time a copy thereof on the agent in whose favor such power of attorney was executed. Such notice shall not bear a separate serial number, but shall specify the form and number of the power of attorney to be revoked, shall name the agent and alternate agent, if any, in whose favor the power of attorney was executed, shall specify a date upon which revocation is to become effective, which must not be less than sixty days subsequent to the date of its receipt by the Commission and shall be executed in the following manner on paper of good quality, size either 8 x 11 inches or 8 1/2 x 11 inches:

REVOCATION NOTICE

_____
(Name of Carrier)

_____
(Post Office Address)

_____, 19_____

Know all men by this instrument:

Effective _____, 19_____, power of attorney P.S.C.I. M._____ No._____ issued by _____
(Name of Carrier)

in favor of _____
(Name of agent and of alternate, in any)

_____
(Name of Carrier)

By_____
(See paragraph (d) and (e) of Rule 5)

Attest (If a Corporation):

_____, Secretary.

(Corporate Seal)

Duplicate mailed to_____, Agent.
(Name of Agent)

_____
(Address)

_____
(Date)

(Department of State Revenue; No. 33034: Schedules of Rates by Motor Vehicles In Intrastate Commerce PT B,Rule 5; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 524) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-32) to the Department of State Revenue (45 IAC 16-3-32) by P.L.72-1988, SECTION 12, effective July 1, 1988.

45 IAC 16-3-33 Change of name or transfer of operation; adoption notice; adoption supplement

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 33. CHANGE OF NAME OR TRANSFER OF ENTIRE OPERATION. (a) Adoption notice. (1) When the name of a contract carrier is changed or when its operating control is transferred to another contract carrier, the carrier which will thereafter operate the properties shall file with the Commission and post an adoption notice, numbered in its P.S.C.I. series as follows:

P.S.C.I. No._____

_____ (Show name and doing business as, if any,
of the adopting carrier)

ADOPTION NOTICE

The above-named carrier hereby adopts, ratifies, and makes its own in every respect, as if the same had been originally filed and posted by it, all schedules, concurrences, or other instruments whatsoever, including supplements or amendments thereto, filed with the Public Service Commission of Indiana by or heretofore adopted by _____ prior to the effective date shown below. Issued _____ Effective _____ Issued under authority of Rule 6 and in conformity with P.S.C.I. Docket No._____.

Issued by_____

(2) Notices of adoption shall be filed with the Commission immediately and, if possible, on or before the effective date shown therein.

(b) Adoption supplement. In addition to the adoption notice, the new carrier shall immediately file with the Commission and post a consecutively numbered supplement to each of the effective schedules issued or adopted by its predecessor reading as follows:

Effective _____,(Here insert date shown in the adoption notice) this schedule, or as amended, became the schedule of_____ (Name and doing business as, if any, of the new carrier) as per its adoption notice P.S.C.I. No._____.

(c) Supplement number and P.S.C.I. series. All supplements to such adopted schedules filed by the adopting carrier shall be numbered consecutively and shall show in connection with the P.S.C.I. number that the number is in the series of the former carrier.

(d) Adopted schedule to be republished. As soon as practicable a schedule adopted in its entirety shall be republished in the series of the adopting carrier. The notice directing its cancellation shall identify it by reference to its P.S.C.I. number and to the series in which it was issued. Any schedule not so reissued prior to its second adoption shall immediately thereafter be republished in the series of the second adopting carrier. *(Department of State Revenue; No. 33034: Schedules of Rates by Motor Vehicles In Intrastate Commerce PT B,Rule 6; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 527) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-33) to the Department of State Revenue (45 IAC 16-3-33) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-34 Partial transfer of operation

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 34. TRANSFER OF PART OF AN OPERATION. (a) Old carrier shall issue supplements. When the operating control of a contract carrier's properties is transferred in part to another contract carrier, the old carrier shall issue a supplement to each of its affected schedules upon 30 days' notice carrying this cancellation notice:

Effective_____ (date) the rates, charges, rules, and regulations, in this schedule are withdrawn and cancelled insofar as they apply _____(here describe the operations transferred). For rates, charges, rules and regulations to apply see schedule P.S.C.I. No._____, issued by (name and doing business as, if any, of the new carrier). NOTE – whenever necessary the term "minimum rates" shall be substituted for the term, "rates," in this notice.

(b) New carrier shall issue and file a schedule or schedules. The new carrier shall issue and file at the same time, to become effective on the same date, a schedule or schedules establishing on 30 days' notice, rates, rules and regulations in lieu of those withdrawn by the old carrier. *(Department of State Revenue; No. 33034: Schedules of Rates by Motor Vehicles In Intrastate Commerce PT B,Rule 7; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 528) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-34) to the Department of State Revenue (45 IAC 16-3-34) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-35 Receivership; definition; filing requirements; termination

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 35. ASSUMPTION OF OPERATING CONTROL BY A RECEIVER. NOTE: As used in Rule 8 *[this section]* and Rule 9, the term "receiver" means a receiver, trustee, executor, administrator, assignee, or other similar party.

Adoption notices and supplements similar to those prescribed in Rule 6, but numbered consecutively in the P.S.C.I. series of the old carrier, must immediately be filed by a receiver when he assumes full possession and operating control of a carrier's lines, and must show the name of the receiver on the title page in connection with the carrier name. When such possession and operating control are terminated, the carrier taking over the properties in their entirety shall file an adoption notice, and if a change in the name of the carrier has been made, shall also file supplements as prescribed in Rule 6. *(Department of State Revenue; No. 33034: Schedules of Rates by Motor Vehicles In Intrastate Commerce PT B,Rule 8; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 528) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-35) to the Department of State Revenue (45 IAC 16-3-35) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-36 Receivership; adoption notices and supplements

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 36. ADOPTIONS; GENERAL INSTRUCTIONS. (See note in Rule 8) (a) Copies of notices of adoption agents. Copies of notices of adoption shall be sent to each agent to which power of attorney has been given by the old carrier. The effective date must be the date on which the change in name or operation occurs, except that if prior approval by the Commission of such change is required, the effective date shown shall not antedate that approval.

(b) Powers of attorney. Powers of attorney adopted by a receiver or other carrier shall, within 120 days, be replaced and superseded by new powers of attorney issued by, and numbered in the series of the receiver or other new carrier, except that a receiver may number powers of attorney in the old series (See also paragraph (b) of Rule 10). The cancellation reference to the former power of attorney must include the name of the former issuing carrier. Powers of attorney which will not be replaced by new issues shall be regularly revoked on the notice and in the manner prescribed by Rule 5.

(c) Adoption notices and supplements to contain no other matter. Adoption notices and special supplements issued under the authority of Rule 6 to Rule 9 shall contain no other matter. *(Department of State Revenue; No. 33034: Schedules of Rates by Motor Vehicles In Intrastate Commerce PT B,Rule 9; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 528) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-36) to the Department of State Revenue (45 IAC 16-3-36) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-37 Temporary control of operations

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 37. TEMPORARY OPERATION OF CONTRACT CARRIER PROPERTIES. (a) New carrier assuming temporary control. When temporary authority to take over the operating control of all or a portion of the operations of a contract carrier is granted pursuant to the provisions of Section 28a of the Act, the new carrier that assumes temporary control of the operations of the old carrier shall, except as provided in Paragraph (b) of this rule, comply with the provisions of Rule 6, Rule 7, and Rule 9.

(b) New powers of attorney to be in series of old carrier. The new carrier is not required to reissue the adopted powers of attorney during the period of temporary control of the operations of the old carrier. New powers of attorney relating to the temporarily controlled operations shall be in the series of the old carrier; for example:

P.S.C.I. MI No. 6 (Roe's Trucking Series)
JOHN DOE TRANSPORT, INC.
Operator of
Richard Roe, d/b/a Roe's Trucking
(Post Office Address)

(c) Publications of the new carrier to be in its name as operator of the old carrier. Changes in schedules of rates, minimum rates, charges or provisions relating thereto, applying from, to, or between points in the temporarily controlled operations shall be published and filed in the name of the new carrier as operator of the old carrier and numbered in the series of the old carrier. For example, if John Doe Transport, Inc., assumes temporary control of the operations of Richard Roe, d/b/a Roe's Trucking, the title page of schedules must show the P.S.C.I. number and name of the carrier in substantially the following manner:

P.S.C.I. No. 17 (Roe's Trucking Series)
JOHN DOE TRANSPORT, INC.
Operator of
Richard Roe d/b/a Roe's Trucking

(d) Adoption notice to be filed when permanent authority is granted to take over temporarily controlled operations. When permanent authority to take over the temporarily controlled operation is granted pursuant to the provisions of Section 28a of the Act, the new carrier shall file an adoption notice and otherwise comply with the provisions of Rule 6, Rule 7, and Rule 9.

(e) Adoption notice to be filed when temporary authority ends. If the temporary authority to assume operating control of the old carrier is discontinued or vacated, the old carrier must file an adoption notice and otherwise comply with Rule 6, Rule 7, and Rule 9. The effective date to be shown in the adoption notice and adoption supplements is the date on which the new carrier's temporary authority to operate the properties of the old carrier expires or is vacated. *(Department of State Revenue; No. 33034:*

Schedules of Rates by Motor Vehicles In Intrastate Commerce PT B,Rule 10; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 529) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-37) to the Department of State Revenue (45 IAC 16-3-37) by P.L.72-1988, SECTION 12, effective July 1, 1988.

45 IAC 16-3-38 Suspension of schedule; filing of supplement

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 38. SUSPENSION OF SCHEDULES. Upon receipt of an order suspending a schedule in part or in its entirety, the carrier who filed such schedule shall immediately file with the Commission a consecutively numbered supplement to the schedule which shall not bear an effective date but which shall quote in full the Commission's order of suspension, followed by a statement that by reasons of the Commission's order the use and application of the suspended publications or portions thereof is deferred for the period prescribed in the suspension order. Such supplement shall give specific reference by P.S.C.I. number or numbers to the schedule or schedules where rates, charges, rules, regulations, or practices continued in effect by the suspension order will be found. The carrier who filed the schedule which has been suspended in part or in its entirety shall also comply with such other instructions as may be furnished it with the order of suspension. *(Department of State Revenue; No. 33034: Schedules of Rates by Motor Vehicles In Intrastate Commerce PT B,Rule 11; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 530) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-38) to the Department of State Revenue (45 IAC 16-3-38) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-39 Suspension supplements and postponement notices; forms

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 39. SUSPENSION SUPPLEMENTS AND POSTPONEMENT NOTICES. (a) All carriers subject to the schedule publishing rules in this Part (PART B) and their duly appointed agents are hereby authorized to:

(1) Publish the following provisions in the supplements (other than consolidated suspension supplements) to their respective schedules, announcing suspension of rates, fares or other provisions of said schedules:

POSTPONEMENT NOTICE

If this supplement is not cancelled on or before (here insert date to which suspended), the effective date of the above-described suspended publication or publications remaining under suspension until that date is hereby postponed to the date upon which this supplement is cancelled. The rates, charges, classifications, rules, regulations, practices, and other provisions continued in force by the above-mentioned order of suspension will apply during the period of suspension and postponement unless and until lawfully changed.

(2) Publish in bound tariffs or supplements thereto, or in loose-leaf tariffs or pages thereto, immediately following the first sentence the "Notice of Suspension" a postponement notice reading substantially as follows:

The effective date of such suspended provisions is hereby postponed to and including_____.

The effective date of such suspended provisions which was postponed to and including _____ is hereby further postponed to and including_____.

All such provisions to be made effective not later than the date to which suspended or postponed and upon as much notice as possible, but in no event less than 1 day's notice.

(b) Where the supplement announcing suspension does not contain postponement notice authorized in Paragraph (a) (1) of this rule and some or all of the matter remains under suspension until the end of the suspension period, carriers and their agents are hereby authorized to issue a postponement notice in a regular supplement or a postponement supplement to their schedule affected, such postponement notice or postponement supplement to provide that the effective date of such matter remaining under suspension is postponed to a specific date or to the date upon which the postponement notice or postponement supplement is cancelled. The supplement containing such postponement notice to provide for the cancellation of the suspension supplement, shall bear an effective date which will be the same date as that named in the suspension order and to be made effective upon as much notice as possible, but in no case less than 1 day's notice.

(c) Where the suspended matter is under postponement to a specific date under authority of Paragraph (b) of this rule and it is desired to further postpone the effective date, carriers or agents may issue a supplement to their tariff or schedule affected, such

supplement to cancel the postponement supplement (if it contains only the notice of postponement) or the postponement notice (if in a supplement containing other matter) and to provide that the effective date of the matter remaining under postponement to the end of the postponement period, is further postponed to a specific date or to the date upon which the postponement supplement or postponement notice is cancelled. The postponement notice or supplement issued hereunder to be made effective not later than the date shown in the previous postponement notice and upon as much notice as possible but in no case less than 1 day's notice.

(d) When the Commission has found the suspended matter justified and the effective date of such matter is under postponement or further postponement, the publishing carrier or agent may within the period of postponement publish and file a supplement (when to a bound schedule) or revised page (when to a loose-leaf schedule) to their schedule affected, such supplement or page to cancel the postponement notice or postponement supplement (in the case of a loose-leaf schedule the postponement supplement may be cancelled by a revised check sheet), cancel the matter continued in effect during the period of postponement and make the postponed matter effective, the supplements or pages issued under this paragraph to bear an effective date which will be earlier than the date to which postponed and be made effective upon not less than 1 day's notice.

(e) Supplements issued to bound schedules under authority of Paragraphs (b), (c), and (d) of this rule *[this section]* which contain no other matter, may be issued without regard to the terms of Rule 3(u) of these regulations, but thereafter such supplements will be counted against the number of supplements and volume of supplemental matter until they are cancelled.

(f) Publications issued hereunder to make specific reference hereto as authority for short notice filing or for tariff circular departure by using the following notation wholly or in part:

Issued on (show number of days) notice; Tariff Circular departure authorized.

This authority does not, except as expressly indicated, waive or modify any outstanding formal order of the Commission, any of the requirements of its published rules relative to the construction and filing of the schedules, nor any of the provisions of the Motor Carrier Act. *(Department of State Revenue; No. 33034: Schedules of Rates by Motor Vehicles In Intrastate Commerce PT B,Rule 12; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 530) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-39) to the Department of State Revenue (45 IAC 16-3-39) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-40 Emergency rates and other schedule provisions

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 40. MOTOR CONTRACT CARRIERS OF PROPERTY; ESTABLISHMENT OF MINIMUM RATES, ETC., COVERING EMERGENCY MOVEMENTS OF PROPERTY. (a) Subject to the limitations herein, motor contract carriers of property may establish rates and other schedule provisions covering emergency movements of property under Section 28a of the Motor Carrier Act, without further notice prior to acceptance of shipments for transportation other than posting of an individual schedule publication (not a loose-leaf page), containing such rates and other schedule provisions, and having four copies of the publication, with a letter of transmittal, filed with the Commission.

(b) Additional departure from the terms of Part B. Motor contract carriers of property may depart from the terms of Part B to the extent necessary to permit the filing of schedules authorized in Paragraph (a) of this rule.

(c) Limitations. (1) This permission does not authorize the cancellation of any minimum charge or provisions on the same commodity between the same points and may not be used to establish minimum charges or other provisions which will result in duplicating and/or conflicting minimum charges, except as authorized in Subparagraph (5) of this paragraph.

(2) Schedules filed hereunder must be consecutively numbered in the carrier's "ET" series in the following manner:

P.S.C.I. No. ET-

(3) Schedules filed hereunder may contain only the minimum charges, rules, and other provisions covering the movement of property under emergency temporary authority and then only for a period of not more than 30 days, and such schedules may not contain other minimum charges or provisions.

(4) All schedules filed hereunder must bear a specific expiration date which will not be later than the date upon which the emergency temporary authority expires.

(5) When it has been discovered the provisions of one "ET" series schedule do not conform to emergency temporary authority actually granted, another schedule, in the carrier's "ET" series, may be filed in accordance with this section to cancel the first and conform schedule provisions to the operating authority.

(6) Supplements to "ET" series schedules are permissible only for the purpose of changing, specifically, the expiration date of the schedule to a date not later than the date upon which the emergency temporary authority, or an extension thereof, expires.

This permission does not modify any outstanding formal order of the Commission, nor waive any of the requirements of its published rules relative to the construction and filing of schedule publications, except as herein authorized, nor modify any of the provisions of Section 28a of the Motor Carrier Act, except as to notice. *(Department of State Revenue; No. 33034: Schedules of Rates by Motor Vehicles In Intrastate Commerce PT B,Rule 13; filed Feb 15, 1973, 3:00 pm: Rules and Regs. 1974, p. 532) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-40) to the Department of State Revenue (45 IAC 16-3-40) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-41 Binding estimates by household goods carriers; applicability

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 41. In accordance with IC 8-2-7-26 *[Repealed by P.L.72-1988, SECTION 10, effective March 1, 1990.]*, common carriers of household goods may issue a written binding estimate to shippers to transport household goods as defined in IC 8-2-7-4(c) *[Repealed by P.L.72-1988, SECTION 10, effective March 1, 1990.]*. A carrier electing to offer binding estimates must do so in accordance with 170 IAC 2-3-41 through 170 IAC 2-3-46. *(Department of State Revenue; 170 IAC 2-3-41; filed Jan 27, 1986, 3:48 pm: 9 IR 1290) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-41) to the Department of State Revenue (45 IAC 16-3-41) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-42 Tariff provisions in binding estimates

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 42. A carrier electing to offer binding estimates must file a provision in its tariff that "Carrier will provide a written binding estimate in accordance with the Public Service Commission Rules and Regulations contained in parts 2-3-42 through 2-3-46 of 170 IAC on a non-preferential basis to all shippers as an alternative to the specified rates and charges detailed in the tariff." *(Department of State Revenue; 170 IAC 2-3-42; filed Jan 27, 1986, 3:48 pm: 9 IR 1290) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-42) to the Department of State Revenue (45 IAC 16-3-42) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-43 Written binding estimates

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 43. (a) Binding estimates shall be in writing, signed and dated by both the carrier and the shipper.

(b) The written binding estimate shall be based on a physical inspection of the items to be moved and contain at least, the following information:

(1) The mover's name, PSCI number, address and telephone.

(2) The shipper's name, address and telephone number at origin and destination, and the physical conditions of the origin and destination facilities pertaining to elevators, stair carries, long-haul carry, etc.

(3) The duration of the estimate (a minimum of thirty (30) days is required.)

(4) A list of all services specifically to be performed and covered by the binding estimate.

(5) A detailed tally sheet, including the cubic feet of all items to be moved and covered by the binding estimate.

(6) The value of the shipment agreed to in writing by the shipper and carrier.

(7) A statement to the effect that the shipment is insured or not insured. If insured, the binding estimate must state the amount of insurance coverage, type of insurance coverage, (i.e., full replacement, depreciated value, or other), and whether or not to *[sic.]* any deductible clause applies. Carriers not complying with this provision will be liable for the full replacement value of the individual items in a shipment.

(8) The total estimate in dollars and cents for all transportation charges and services as agreed to in writing by the carrier and shipper.

(9) An hourly rate to be assessed at origin or destination for any additional labor services that are not named on the estimate and subsequently requested by the shipper.

(10) A statement to the effect that the written binding estimate will not cover delays caused by any impediment to the move which are not caused by the mover.

(Department of State Revenue; 170 IAC 2-3-43; filed Jan 27, 1986, 3:48 pm: 9 IR 1290) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-43) to the Department of State Revenue (45 IAC 16-3-43) by P.L.72-1988, SECTION 12, effective July 1, 1988.

45 IAC 16-3-44 Variances from estimate

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 44. (a) At the time of the move, the shipment will be weighed and confirmed by weight tickets.

(b) The carrier will then determine what the actual total charges would be under the carriers' tariffs on file with the commission and charge the customer the lower of the actual total charges or the estimate.

(c) If at the time of the move the shipper requests additional labor services from a carrier that are not listed on the original binding estimate, an adjustment may be made by the carrier to the binding estimate to reflect the hourly rate for additional services as specified in the estimate (see 170 IAC 2-3-43(b)(9)).

(d) If at the time of the move the shipper requests additional accessorial services that are not labor related and that are not listed on the original binding estimate, an adjustment may be made by the carrier to the binding estimate to reflect the carrier's published tariff rate for such additional service. *(Department of State Revenue; 170 IAC 2-3-44; filed Jan 27, 1986, 3:48 pm: 9 IR 1290) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-44) to the Department of State Revenue (45 IAC 16-3-44) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

45 IAC 16-3-45 Carrier's liability under written binding estimate

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 45. (a) The carrier's liability when performing a transportation movement under a written binding estimate must be explicitly stated in the written binding estimate. The carrier may accept a shipment for transportation under one of the following three (3) options:

Option One–Every shipment will automatically be accepted at a value of $5,000. The shipper must indicate acceptance or rejection of the $5,000 by signing or initialing the written binding estimate.

Option Two–The shipper may indicate in his/her handwriting on the written binding estimate, a value above or below the $5,000 dollar figure specified in Option One above. The shipper must sign or initial the valuation figure.

Option Three–If the shipper rejects the $5,000 dollar valuation, and specifies zero valuation, shipment will be accepted at a value of $.60, per pound, for each article in the shipment that is either lost or damaged.

(b) In the case of Options One and Two above, the following provisions apply:

(1) Charges for the valuation, if any, must be specified on written binding estimate.

(2) Shipper must indicate the actual value of the entire shipment.

(3) If the actual value of the entire shipment exceeds that specified as the value in Options One and Two above, the shipper must be advised that co-insurance applies.

(4) The carrier shall sell or procure an insurance policy covering the loss or damage to a shipment of household goods. Provided, however, that the shipper is issued a policy or other appropriate evidence of insurance purchased and a copy thereof is furnished to the shipper prior to the time of the shipment. Failure to issue a policy or other evidence of insurance will subject a carrier to full liability for any loss or damage to articles caused by the carrier.

(Department of State Revenue; 170 IAC 2-3-45; filed Jan 27, 1986, 3:48 pm: 9 IR 1291; errata, 9 IR 1379) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-45) to the Department of State Revenue (45 IAC 16-3-45) by P.L.72-1988, SECTION 12, effective July 1, 1988.

45 IAC 16-3-46 Publication of tariff provisions in binding estimates

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 46. Tariff provisions establishing a binding estimate may be filed on one days' notice to the public and the commission, up to and including, March 31, 1986. After March 31, 1986, tariff provisions establishing or cancelling a binding estimate must be filed on not less than thirty (30) days' notice to the public and the commission. *(Department of State Revenue; 170 IAC 2-3-46; filed Jan 27, 1986, 3:48 pm: 9 IR 1291) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-3-46) to the Department of State Revenue (45 IAC 16-3-46) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

Rule 4. Commuter Van Services (Repealed)

(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)

Rule 5. Authorized Emergency Vehicles

45 IAC 16-5-1 Ambulances designated as authorized emergency vehicles

Authority: IC 8-2.1-18-6
Affected: IC 8-2.1-18

Sec. 1. All ambulances, other than those designated as emergency vehicles, by Acts 1939, Chapter 48, Section 2, as amended, which are used in emergency service are hereby designated as authorized emergency vehicles and may be operated as such in accordance with applicable laws of the State of Indiana. *(Department of State Revenue; No. 30016: Designation of Authorized Emergency Vehicles Rule I; filed Jul 8, 1963, 11:15 am: Rules and Regs. 1964, p. 141) NOTE: Transferred from the Indiana Utility Regulatory Commission (170 IAC 2-5-1) to the Department of State Revenue (45 IAC 16-5-1) by P.L.72-1988, SECTION 12, effective July 1, 1988.*

ARTICLE 17. TAXATION OF FINANCIAL INSTITUTIONS

Rule 1. Definitions

45 IAC 17-1-1 Applicability

Authority: IC 6-5.5-9-1
Affected: IC 6-5.5

Sec. 1. Unless otherwise defined, all terms used in this article shall have the same meaning as those terms are defined in IC 6-5.5. *(Department of State Revenue; 45 IAC 17-1-1; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1210)*

Rule 2. Taxpayer

45 IAC 17-2-1 Financial Institutions Tax (FIT)

Authority: IC 6-5.5-9-1
Affected: IC 6-5.5-1-17; IC 6-5.5-2-8

Sec. 1. (a) The Financial Institutions Tax (FIT) is intended to tax both traditional financial institutions (such as banks and savings and loans, etc.), that are transacting business within Indiana, as well as other types of businesses that are deemed to be transacting the business of a financial institution in Indiana.

(b) The FIT is a franchise tax imposed upon a corporation that:

(1) is transacting the business of a financial institution in Indiana;

(2) is a partner in a partnership that is transacting the business of a financial institution in Indiana; or

(3) is the grantor and beneficiary of a trust that is transacting the business of a financial institution in Indiana.

(Department of State Revenue; 45 IAC 17-2-1; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1210)

45 IAC 17-2-2 "Corporation" defined

Authority: IC 6-5.5-9-1
Affected: IC 6-5.5-1-17

Sec. 2. As used in section 1 of this rule, "corporation" means an entity that is:

(1) a corporation (as defined in Internal Revenue Code Section 7701(a)(3)) for federal income tax purposes, or any other entity taxed as a corporation under the Internal Revenue Code; and

(2) organized under the law of the United States, this state, any other taxing jurisdiction, or a foreign government.

(Department of State Revenue; 45 IAC 17-2-2; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1210)

45 IAC 17-2-3 Financial institutions

Authority: IC 6-5.5-9-1
Affected: IC 6-5.5

Sec. 3. (a) The "business of a financial institution" means the activities of a holding company, a regulated financial corporation, or a subsidiary of either that each is authorized to perform under federal or state law, including the activities authorized by regulation or order of the Federal Reserve Board for such a subsidiary under Section (4)(C)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(C)(8)).

(b) For purposes of the FIT, a "holding company" means a corporation which is registered under the Federal Bank Holding Company Act of 1956, or registered as a savings and loan holding company other than a diversified savings and loan holding company (as defined in Section 408(a)(1)(F) of the Federal National Housing Act (12 U.S.C. 1730(a)(1)(F)).

(c) For purposes of the FIT, a "regulated financial corporation" means:

(1) an institution, the deposits, shares, or accounts of which are insured under the Federal Deposit Insurance Act, or by the Federal Savings and Loan Insurance Corporation;

(2) an institution that is a member of a Federal Home Loan Bank;

(3) any other bank or thrift institution incorporated or organized under the laws of a state that is engaged in the business of receiving deposits. (The terms "bank", "thrift institution", and "deposits" shall have the same meaning as used in the title, article, chapter, section, or administrative rule under which the corporation is chartered or regulated.);

(4) a credit union incorporated and organized under the laws of this state;

(5) a production credit association organized under 12 U.S.C. 2071;

(6) a corporation organized under 12 U.S.C. 611 through 12 U.S.C. 631 (an Edge Act corporation); or

(7) a federal or state agency or branch of a foreign bank (as defined in 12 U.S.C. 3101).

(d) For purposes of the FIT, a "subsidiary" of a holding company or a regulated financial corporation means:

(1) a corporation which has fifty percent (50%) or more of its voting stock owned by another legal entity; or

(2) an entity other than a corporation that is taxed as a corporation under the Internal Revenue Code and has fifty percent (50%) or more of its net worth owned by another legal entity.

(Department of State Revenue; 45 IAC 17-2-3; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1210)

45 IAC 17-2-4 Other corporations

Authority: IC 6-5.5-9-1
Affected: IC 6-5.5

Sec. 4. (a) The tax is also imposed upon any corporation if the corporation is organized under the laws of the United States, this state, another taxing jurisdiction, or a foreign government and the corporation is carrying on the business of a financial institution within Indiana.

(b) The corporation is deemed to be conducting the business of a financial institution and therefore subject to the FIT if eighty percent (80%) or more of the corporation's gross income during the taxable year is derived from the following activities:

(1) Extending credit. (Refer to subsection (e) below.)

(2) Leasing that is the economic equivalent of extending credit.

(3) Credit card operations.

(c) As used in this section, "gross income" includes the income derived from activities which are performed by corporations

primarily (as defined by the eighty percent (80%) test) engaged in the business of extending credit. Gross income includes income from the following:

(1) Interest.

(2) Fees.

(3) Penalties.

(4) A market discount or other type of discount.

(5) Rental income.

(6) The gain on a sale of intangible or other property evidencing a loan or extension of credit.

(7) Dividends or other income received as a means of furthering any of the three (3) activities listed in subsection (b).

(d) Extraordinary income is excluded from gross income for purposes of satisfying the eighty percent (80%) test. Extraordinary income includes income which is unusual, infrequent, nonrecurring, and unrelated to the extension of credit.

(e) For purposes of satisfying the eighty percent (80%) test, corporations which are in the business of a financial institution must be conducting the activities of extending credit, leasing that is the economic equivalent of the extension of credit, or credit card operations, as follows:

(1) Making, acquiring, selling, or servicing loans or extensions of credit. For the purpose of this subdivision, loans and extensions of credit include secured or unsecured consumer loans; installment obligations; mortgage or other secured loans on real estate or tangible personal property; credit card loans; secured and unsecured commercial loans of any type; letters of credit and acceptance of drafts; loans arising in factoring; and any other transactions with a comparable economic effect. The following are examples of extending credit:

(A) A corporation is a manufacturer of widgets. In 19x9, the corporation received one million dollars ($1,000,000) in gross income from the sale of widgets. In selling such widgets, the corporation makes available an installment obligation plan whereby its customers buy widgets over an extended period of time. In 19x9, the corporation received one hundred thousand dollars ($100,000) in interest and fees from such installment obligations. Because only ten percent (10%) of the corporation's total receipts from all sources is derived from extending credit, the corporation is not considered a taxpayer for purposes of the FIT.

(B) Corporation A is primarily engaged in the business of a collection agency. Various other corporations enter into contracts with Corporation A for purposes of having delinquent loan monies collected. Corporation A does not originate or acquire the loans. Corporation A receives income from the various corporations based upon the percentage of payments collected. Corporation A is not a taxpayer for purposes of the FIT. Although one hundred percent (100%) of Corporation A's income is from servicing loans, Corporation A is not extending credit.

(2) Leasing or acting as an agent, broker, or advisor, in connection with leasing real and personal property that is the economic equivalent of the extension of credit if the transaction is not treated as a lease for federal income tax purposes. If the lease is the economic equivalent of the extension of credit, and the lease is not treated as a lease for federal income tax purposes, the income derived from the lease is included in gross income for purposes of satisfying the eighty percent (80%) test whether the corporation is leasing its own real or personal property or is the lessor of real or personal property owned by another.

(3) Operating a credit card, debit card, charge card, or similar business. If eighty percent (80%) of a corporation's total gross income is derived from:

(A) extending credit;

(B) leasing; or

(C) credit card operations;

the corporation is subject to the FIT.

(See 45 IAC 17-4-4 concerning taxation of corporations which are partners in a partnership and corporations which are grantors and beneficiaries of a trust.) *(Department of State Revenue; 45 IAC 17-2-4; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1211)*

45 IAC 17-2-5 Exemptions

Authority: IC 6-5.5-9-1

Affected: IC 6-2.1; IC 6-3-8; IC 6-5; IC 6-5.5-2-7; IC 6-5.5-9-4; IC 27-1-18-2

Sec. 5. (a) Generally, any taxpayer which is taxable under the FIT (IC 6-5.5) is exempt from the following:

(1) Indiana's gross income tax (IC 6-2.1).

(2) Adjusted gross income tax (IC 6-3).

(3) Supplemental net income tax (IC 6-3-8).
(4) Bank tax (IC 6-5-10).
(5) Savings and loan tax (IC 6-5-11).
(6) Production credit association tax (IC 6-5-12).

However, in the case of a partnership with a corporate partner, transacting the business of a financial institution, only the income subject to FIT shall be exempt from the above listed taxes. (See 45 IAC 17-4-4 regarding the tax liability for corporate partners of a partnership which is doing the business of a financial institution.) NOTE: The exemptions provided for the taxes listed in subdivisions (1) through (3) do not apply to a taxpayer to the extent the taxpayer is acting in a fiduciary capacity.

(b) Four (4) types of corporations are exempt from the FIT as follows:
(1) Insurance companies subject to tax under IC 27-1-18-2 or IC 6-2.1.
(2) International banking facilities, as defined in Regulation D of the Board of Governors of the Federal Reserve System.
(3) Subchapter S corporations, as defined in Section 1363 of the Internal Revenue Code.
(4) Any corporation which is exempt from taxation under the Internal Revenue Code except for the corporation's unrelated business income.

(Department of State Revenue; 45 IAC 17-2-5; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1212)

45 IAC 17-2-6 Transacting business within Indiana

Authority: IC 6-5.5-9-1
Affected: IC 6-5.5-3; IC 22-4-2

Sec. 6. (a) A taxpayer is transacting business within Indiana if the taxpayer has activities which include any of the following:
(1) Maintains an office in Indiana by establishing a regular, continuous, and fixed place of business in this state.
(2)(A) Has an employee, representative, or independent contractor conducting business in Indiana evidenced by such persons regularly acting on behalf of the taxpayer in furthering the business of a financial institution, as defined in section 3 of this rule;
(B) both the office from which such person's activities are directed or controlled is located in Indiana and the majority of such person's services are conducted on behalf of the taxpayer in this state; or
(C) a contribution to the Indiana employment security fund is required under IC 22-4-2 with respect to compensation paid to the employee.
(3) Owns or leases to customers real or tangible personal property if the property is physically situated in this state. Mobile tangible personal property is deemed to be located in Indiana if:
(A) such property is operated entirely in Indiana or is only occasionally operated outside this state; or
(B) the principal base of operations from which the property is sent out is in Indiana or there is no principal base of operations and Indiana is the commercial domicile of the lessee or other user of the property.
(4) Regularly solicits business from potential customers in Indiana.
(5) Regularly solicits and receives deposits from Indiana customers in Indiana. Deposits are attributed to this state if they are deposits made by this state or residents, political subdivisions, or agencies and instrumentalities of this state regardless of whether the deposits are accepted or maintained by the taxpayer at locations within Indiana.
(6) Regularly sells products or services of any kind or nature to Indiana customers in Indiana that receive the product or service in Indiana.
(7) Regularly performs services outside Indiana that are consumed within Indiana.
(8) Regularly engages in transactions with Indiana customers that involve intangible property, including loans, but not property described in section 7 of this rule and result in receipts flowing to the taxpayer from within Indiana.

(b) For purposes of this article, “regularly”, when applied to any business activity, depends on the number of transactions, and with respect to any transaction, its size and complexity and whether it involves one (1) act or a series of activities to be performed over a substantial time period, and the extent to which any transaction or transactions involve the protection by the laws, government, or public institutions of the state of Indiana. The following are examples:
(1) A corporation which operates a credit card or charge card business and executes a contract with cardholders enforceable in Indiana which is evidenced by one (1) or more of the following: billed to cardholders in Indiana, providing interest on any amount due until paid, providing a card which operates as a form of money for purchasing material and services in Indiana, or establishes contracts with the Indiana vendors.

(2) A regulated financial corporation receiving deposits and making loans in Indiana, operated through mail, telephone, or automated terminals in Indiana with computer generated or other record keeping and billing outside Indiana.

(3) A regulated financial corporation providing an Indiana based corporation with a line of credit with complex credit requirements and supervision.

(4) A construction loan in Indiana requiring many draws and substantial inspection and certification over a period of time in Indiana.

(Department of State Revenue; 45 IAC 17-2-6; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1212)

45 IAC 17-2-7 Exemptions; certain activities

Authority: IC 6-5.5-9-1
Affected: IC 6-5.5-3-8; IC 6-5.5-4

Sec. 7. A taxpayer is not considered to be transacting business in Indiana for the purposes of the FIT if the only activities of the taxpayer in Indiana are, or are in connection with, any of the following:

(1) Maintaining or defending an action or suit.

(2) Filing, modifying, renewing, extending, or transferring a mortgage, deed of trust, or security interest.

(3) Acquiring, foreclosing, or otherwise conveying property in Indiana as a result of a default under the terms of a mortgage, deed of trust, or other security instrument relating to the property.

(4) Selling tangible personal property, if taxation is precluded by 15 U.S.C. 381 through 15 U.S.C. 384.

(5) Owning an interest in the following types of property even though activities are conducted within Indiana that are reasonably required to evaluate and complete the acquisition or disposition of the property, the servicing of the property or the income from the property, the collection of income from the property, or the acquisition or liquidation of collateral relating to the property:

(A) An interest in a real estate mortgage investment conduit, a real estate investment trust, or a regulated investment company (as those terms are defined in the Internal Revenue Code).

(B) An interest in a loan backed security representing ownership or participation in a pool of promissory notes or certificates of interest that provide for payments in relation to payments or reasonable projections of payments on the notes or certificates.

(C) An interest in a loan or other asset from which the interest is attributed in IC 6-5.5-4-4, IC 6-5.5-4-5, and IC 6-5.5-4-6 and in which the payment obligations were solicited and entered into by a person that is independent and not acting on behalf of the owner.

(D) An interest in the right to service or collect income from a loan or other asset from which interest on the loan or other asset is attributed in IC 6-5.5-4-4 through IC 6-5.5-4-6 and in which the payment obligations were solicited and entered into by a person that is independent and not acting on behalf of the owner.

(E) An amount held in an escrow or a trust account with respect to property described in this subdivision.

(6) Acting:

(A) as an executor of an estate;

(B) as a trustee of a benefit plan;

(C) as a trustee of an employees' pension, profit sharing, or other retirement plan;

(D) as a trustee of a testamentary or inter vivos trust or corporate indenture; or

(E) in any other fiduciary capacity, including holding title to real property in Indiana.

(Department of State Revenue; 45 IAC 17-2-7; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1213)

45 IAC 17-2-8 "Soliciting business" defined

Authority: IC 6-5.5-9-1
Affected: IC 6-5.5-3-1

Sec. 8. A taxpayer is not required to be physically present within Indiana to be soliciting business. Soliciting business includes, but is not limited to, the following:

(1) The distribution, by mail or otherwise, of catalogs, periodicals, advertising flyers, or other written solicitations of business to potential customers in Indiana, without regard to the state from where the distribution originated or where the materials

were prepared.

(2) Display of advertisements on billboards or other outdoor advertising in this state.

(3) Advertisements in newspapers published in this state.

(4) Advertisements in trade journals or other periodicals, the circulation of which is primarily within this state.

(5) Advertisements in an Indiana edition of a national or regional publication or a limited regional edition of which this state is included as part of a broader regional or national publication, and which are not placed in other geographically defined editions of the same issue of the same publication.

(6) Advertisements in regional or national publications in an edition which is not by its contents geographically targeted to Indiana, but which is sold over the counter in Indiana or by subscription to Indiana residents.

(7) Advertisements broadcast on a radio or television station which are received by Indiana residents.

(8) Any other solicitation by telegraph, telephone, computer data base, cable, optic, microwave, or other communication system.

(Department of State Revenue; 45 IAC 17-2-8; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1214)

45 IAC 17-2-9 Regularly soliciting business; presumption

Authority: IC 6-5.5-9-1
Affected: IC 6-5.5-3-4

Sec. 9. A taxpayer is presumed, subject to rebuttal, to regularly solicit business within Indiana during a taxable year if at any time during the taxable year, the sum of the taxpayer's assets, including the assets arising from loan transactions, and the absolute value of the taxpayer's deposits attributable to Indiana, equal at least five million dollars ($5,000,000), or if the taxpayer does any of the following during the taxable year:

(1) Sells products or services of any kind or nature to twenty (20) or more Indiana customers who receive the product or service in Indiana.

(2) Solicits business from twenty (20) or more potential Indiana customers.

(3) Performs services outside Indiana that are consumed within Indiana by twenty (20) or more customers.

(4) Engages in transactions with twenty (20) or more Indiana customers that involve intangible property, including loans, but not property described in section 7 of this rule and result in receipts flowing to the corporation from such customers within Indiana.

However, if a taxpayer is presumed to be regularly soliciting business in Indiana, but its total activities in Indiana fall within the exempt activities identified in section 7 of this rule, the taxpayer is not subject to the FIT. *(Department of State Revenue; 45 IAC 17-2-9; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1214)*

Rule 3. Computation of Tax

45 IAC 17-3-1 Adjusted gross income

Authority: IC 6-5.5-9-1
Affected: IC 6-5.5-1-2

Sec. 1. For corporations other than credit unions or investment companies, "adjusted gross income" means taxable income as defined in Section 63 of the Internal Revenue Code, adjusted as follows:

(1) Add an amount equal to a deduction allowed or allowable under Section 166 (Bad Debt), Section 585 (Reserve for Bad Debt), or Section 593 (Reserve for Bad Debt) of the Internal Revenue Code.

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

(3) Add an amount equal to a deduction or deductions allowed or allowable under Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by a state of the United States or for taxes on property levied by a state or a subdivision of a state of the United States. (This provision requires the add back of taxes on property (real and tangible personal) levied at the local level, and taxes on property levied at the state level, e.g., Indiana's motor vehicle excise tax).

(4) Add the amount of interest excluded under Section 103 (Interest on State and Local Bonds) of the Internal Revenue Code

or under any other federal law, minus the associated expenses disallowed in the computation of taxable income under Section 265 (Expenses and Interest Relating to Tax-Exempt Income) of the Internal Revenue Code.

(5) Add an amount equal to the deduction allowed under Section 172 (Net Operating Loss Deduction) or Section 1212 (Capital Loss Carrybacks and Carryovers) of the Internal Revenue Code for net operating losses or net capital losses.

(6) Subtract income that the United States Constitution or any statute of the United States prohibits from being used to measure the FIT, imposed by IC 6-5.5. Although United States obligations are not subject to income taxation as provided under federal law, United States obligations are not preempted by federal law from franchise taxes. See 15 U.S.C. 3124(a). Therefore, United States obligations are not subtracted from federal taxable income for purposes of the FIT.

(7) Subtract income that is derived from sources outside the United States, as defined by the Internal Revenue Code.

(8) Subtract an amount equal to a debt or portion of a debt that becomes worthless during the taxable year within the meaning of Section 166(a) (Wholly or Partially Worthless Debts) of the Internal Revenue Code.

(9) Subtract an amount equal to any bad debt reserves that are included in federal taxable income because of accounting method changes required by Section 585(c)(3)(A) of the Internal Revenue Code.

(Department of State Revenue; 45 IAC 17-3-1; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1214)

45 IAC 17-3-2 Methods of reporting

Authority: IC 6-5.5-9-1
Affected: IC 6-5.5-5-1; IC 6-5.5-6-1

Sec. 2. (a) Consolidated reporting is not permitted for purposes of the FIT. Separate or combined reporting are the only methods of reporting which are allowed.

(b) A taxpayer shall file a separate return when the taxpayer is not a member of a unitary group. If the taxpayer is a member of a unitary group as defined in section 5 of this rule, combined reporting is mandatory, unless IC 6-5.5-5-1(b) is applicable.

(Department of State Revenue; 45 IAC 17-3-2; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1215)

45 IAC 17-3-3 Calculating the FIT liability for resident taxpayers filing a separate return

Authority: IC 6-5.5-9-1
Affected: IC 6-5.5-2-1; IC 6-5.5-2-2

Sec. 3. (a) A resident taxpayer is a corporation that is transacting business within Indiana under 45 IAC 17-2-6, and is commercially domiciled in this state.

(b) Generally, the FIT liability before allowable credits for a resident taxpayer that is not a member of a unitary group is determined as follows:

STEP ONE: Calculate adjusted gross income as defined under section 1 of this rule. NOTE: Adjusted gross income includes the taxpayer's adjusted gross income from whatever source derived; therefore, adjusted gross income includes income from all taxing jurisdictions and without regard to the type of activity which produced such income. The adjusted gross income is not apportioned.

STEP TWO: Subtract from STEP ONE deductible net operating losses incurred in taxable years beginning after December 31, 1989. NOTE: A net operating loss for any taxable year is a net operating loss carryover to each of the fifteen (15) taxable years that follow the taxable year in which the loss occurred or until exhausted, whichever occurs first.

STEP THREE: Subtract from the result of STEP TWO an amount equal to net capital losses not to exceed the taxpayer's net capital gains that were incurred for taxable years beginning after December 31, 1989, to the extent that such net capital losses were added back in determining adjusted gross income. NOTE: Capital losses unused during the taxable year may be carried forward to each of the five (5) succeeding taxable years or until exhausted, whichever occurs first. However, net capital losses carried forward can only be deducted to the extent of net capital gains.

STEP FOUR: Multiply the result of STEP THREE by the FIT rate.

(Department of State Revenue; 45 IAC 17-3-3; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1215)

45 IAC 17-3-4 Calculating the FIT liability for the nonresident taxpayer filing a separate return

Authority: IC 6-5.5-9-1
Affected: IC 6-5.5-2-1; IC 6-5.5-2-3

Sec. 4. (a) A nonresident taxpayer is a corporation which is transacting business in Indiana under 45 IAC 17-2-6 and has its commercial domicile in a taxing jurisdiction outside Indiana.

(b) Generally, the FIT liability before allowable credits for a nonresident taxpayer which is not a member of a unitary group is determined as follows:

STEP ONE: Calculate adjusted gross income as defined under section 1 of this rule. NOTE: Adjusted gross income includes the taxpayer's adjusted gross income from whatever source derived. The adjusted gross income is then apportioned. The adjusted gross income for the taxable year is multiplied by the quotient of:

(A) the taxpayer's total receipts attributed to transacting business in Indiana as determined under section 10 of this rule; divided by

(B) the taxpayer's total receipts from transacting business in all taxing jurisdictions.

STEP TWO: Subtract from STEP ONE deductible Indiana net operating losses incurred in taxable years beginning after December 31, 1989. When calculating the Indiana portion of the net operating losses, use the apportionment percentage used for the taxable year of the loss. NOTE: A net operating loss for any taxable year is a net operating loss carryover to each of the fifteen (15) taxable years that follow the taxable year in which the loss occurred or until exhausted, whichever occurs first.

STEP THREE: Subtract from the result in STEP TWO an amount equal to any capital loss carry forward for taxable years beginning after December 31, 1989, multiplied by the apportionment percentage used for the applicable loss year plus any capital loss incurred during the taxable year multiplied by the current year's apportionment percentage. The amount of losses available to be deducted are limited to the extent of the current year's apportioned capital gains. NOTE: Capital losses unused during the taxable year may be carried forward to each of the five (5) succeeding taxable years or until exhausted, whichever occurs first.

STEP FOUR: Multiply the result of STEP THREE by the FIT rate.

(Department of State Revenue; 45 IAC 17-3-4; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1215)

45 IAC 17-3-5 Unitary groups

Authority: IC 6-5.5-9-1
Affected: IC 6-2.1-2-11; IC 6-5.5-1-18; IC 6-5.5-5-1

Sec. 5. (a) A designated taxpayer who is a member of a unitary group shall file a combined return covering all the operations of the unitary business and including all taxpayer members of the unitary group.

(b) A corporation must be a taxpayer as defined under 45 IAC 17-2 in order to be a member of a unitary group for purposes of the FIT.

(c) A "unitary business" means business activities or operations that are of mutual benefit, dependent upon, or contributory to one another, individually, or as a group, in transacting the business of a financial institution. Unity of ownership exists when a corporation is a member of a group of two (2) or more entities and more than fifty percent (50%) of the voting stock of each member of the group is directly or indirectly owned by:

(1) a common owner or common owners, either corporate or noncorporate; or

(2) one (1) or more of the member corporations of the group. Example 1, Corporation A owns eighty percent (80%) of Subsidiary B. Subsidiary B owns sixty percent (60%) of Subsidiary C. Corporation A directly owns eighty percent (80%) of Subsidiary B and indirectly owns forty-eight percent (48%) of Subsidiary C. There is unity of ownership between Corporation A and Subsidiary B because Corporation A directly owns more than fifty percent (50%) of Subsidiary B. There is unity of ownership between Subsidiary B and Subsidiary C because Subsidiary B directly owns more than fifty percent (50%) of Subsidiary C. Although Corporation A indirectly owns only forty-eight percent (48%) of Subsidiary C, there is unity of ownership between Corporation A and Subsidiary B and Subsidiary C because Subsidiary B is a member corporation of the group and directly owns more than fifty percent (50%) of Subsidiary C. Example 2, Corporation A owns one hundred percent (100%) of Corporations B and C. Corporations B and C each owns thirty percent (30%) of Corporation D. Although no single corporation owns more than fifty percent (50%) of Corporation D, the unitary group owns sixty percent (60%) of Corporation D. Therefore Corporation D is a member of the unitary group.

Unity is presumed whenever there is unity of ownership, operation, and use evidenced by centralized management or executive force, centralized purchasing, advertising, accounting, or other controlled interaction among entities that are members of a unitary group.

(d) A unitary group for purposes of the FIT is composed of those taxpayer members that are engaged in a unitary business

transacted wholly or partially within Indiana. Therefore, if one (1) member of a unitary group is conducting the business of a financial institution in Indiana, then all members of the unitary group engaged in a unitary business must file a combined return, even if some of the members are not transacting business in Indiana. The following are examples of unitary groups:

(1) A parent corporation is a taxpayer and commercially domiciled in Indiana. Parent owns fifty-five percent (55%) of Subsidiary A which is a taxpayer and commercially domiciled in Indiana. Parent also owns fifty-five percent (55%) of Subsidiary B which transacts the business of a financial institution and is commercially domiciled outside the state of Indiana. Subsidiary B does not extend credit in Indiana. Assume that the parent and Subsidiary A and Subsidiary B are engaged in a unitary business. The combined return must include the respective adjusted gross income of the parent and both subsidiaries.

(2) A parent corporation owns more than fifty percent (50%) of five (5) subsidiaries. Three (3) of the corporations are conducting the business of a financial institution. Two (2) of the corporations derive one hundred percent (100%) of their income from manufacturing. For purposes of the FIT, the three (3) corporations conducting the business of a financial institution are a unitary group and must file a combined return. The two (2) corporations which are manufacturers are neither subject to the FIT nor a member of the unitary group.

(3) Assume the same facts as stated in subdivision (2). The parent corporation derives sixty percent (60%) of its income from the three (3) subsidiaries which are financial institutions and forty percent (40%) from its subsidiaries' manufacturing operations. If the parent is not a taxpayer for purposes of the FIT, the parent would not be a member of the unitary group for purposes of the FIT. (In the event the parent is a taxpayer under the Gross Income Tax Act (IC 6-2.1-2-11), the parent would exclude income attributable to the members of the group subject to the franchise tax.) However, if the parent satisfies the eighty percent (80%) test because eighty percent (80%) or more of its gross income is derived from the business of a financial institution (either from the parent's financial activities alone or in conjunction with the income stream from the financial subsidiaries), the parent would be included as a member of the unitary group.

(Department of State Revenue; 45 IAC 17-3-5; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1216)

45 IAC 17-3-6 Calculating the FIT liability for taxpayers filing a combined return

Authority: IC 6-5.5-9-1
Affected: IC 6-5.5-2-4; IC 6-5.5-5-2

Sec. 6. Generally, the FIT liability before allowable credits for a taxpayer filing a combined return for a unitary group is determined as follows:

STEP ONE: Eliminate all income and deductions from transactions between entities that are included in the unitary group.

STEP TWO: Calculate the unitary group's adjusted gross income which consists of:

(A) all of the adjusted gross income of the resident taxpayer members of the unitary group; plus

(B) the adjusted gross income of all nonresident taxpayer members of the unitary group for the taxable year multiplied by the quotient of:

(i) the receipts of the nonresident taxpayer members of the unitary group attributable to transacting business in Indiana, as determined under section 10 of this rule; divided by

(ii) the receipts of the nonresident taxpayer members of the unitary group from transacting business in all taxing jurisdictions, as determined under section 10 of this rule.

The above calculation does not permit each member to separately calculate its own Indiana adjusted gross income.

STEP THREE: Subtract from the result in STEP TWO an amount equal to the unitary group's net operating losses attributed to Indiana that were incurred in taxable years beginning after December 31, 1989. The amount of the net operating loss deduction shall be computed similar to STEP TWO above for the tax year in which the net operating loss occurred. The unitary group's net operating loss deduction consists of:

(A) all of the adjusted gross income of the resident taxpayer members of the unitary group for the loss year; plus

(B) all of the adjusted gross income of all nonresident taxpayer members of the unitary group for the loss year multiplied by the quotient of:

(i) the receipts during the loss year of the nonresident taxpayer members of the unitary group attributable to transacting business in Indiana, as determined under section 10 of this rule; divided by

(ii) the receipts during the loss year of the nonresident taxpayer members of the unitary group from transacting business in all taxing jurisdictions.

STEP FOUR: Subtract from the result in STEP THREE an amount equal to the unitary group's capital loss carry forward for

taxable years beginning after December 31, 1989, and the capital loss for the current taxable year which is attributable to Indiana. The amount of losses available to be deducted are limited to the extent of the current year's capital gains attributed to Indiana. (Note: Capital losses unused during the taxable year may be carried forward to each of the five (5) succeeding taxable years or until exhausted, whichever occurs first.) The current year's capital gains attributed to Indiana is determined by the sum of the capital gains of the resident members plus the capital gains attributed to Indiana for the nonresident members. The unitary group's capital losses attributed to Indiana for the current taxable year must be multiplied by the capital loss ratio. The capital loss ratio is determined by the sum of Indiana's resident member's total receipts plus nonresident member's receipts attributed to Indiana divided by the unitary group's total receipts derived from all taxing jurisdictions. The unitary group's capital loss carry forward attributed to Indiana for taxable years beginning after December 31, 1989, must be multiplied by the capital loss ratio used for the respective loss year. The capital loss ratio is determined by the sum of Indiana's resident member's total receipts plus nonresident member's receipts attributed to Indiana divided by the unitary group's total receipts derived from all taxing jurisdictions.

STEP FIVE: Multiply the result in STEP FOUR by the FIT rate.

(Department of State Revenue; 45 IAC 17-3-6; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1217)

45 IAC 17-3-7 Credits for taxes paid to other states

Authority: IC 6-5.5-9-1
Affected: IC 6-5.5

Sec. 7. (a) A resident taxpayer or a resident member of a unitary group is entitled to a credit against the FIT.

(b) To claim a credit for creditable taxes paid to other taxing jurisdictions, the resident taxpayer must provide the department with a schedule which lists the separate taxing jurisdictions and the respective amounts paid.

(c) As used in this section, “creditable tax” means a tax imposed by a taxing jurisdiction and based on any of the following:

(1) Net income.
(2) Franchise.
(3) Deposits.
(4) Investment capital.
(5) Shares.
(6) Net worth or capital.
(7) A combination of these tax bases.
(8) Any other tax that is imposed instead of an income tax.

(d) Taxes paid to political subdivisions of a state are not creditable taxes.

(e) The credit equals the lesser of any of the following:

(1) The amount of creditable tax actually paid by the resident taxpayer or member to any other taxing jurisdiction on the resident taxpayer's or member's adjusted gross income.

(2) The amount of creditable tax calculated on the taxpayer's adjusted gross income that is subject to taxation by the other taxing jurisdiction using Indiana's tax rate.

(3) The amount of creditable tax calculated on the taxpayer's adjusted gross income that is attributable to the other taxing jurisdictions under the rules for attributing gross receipts under section 10 of this rule using Indiana's tax rate.

(Department of State Revenue; 45 IAC 17-3-7; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1218)

45 IAC 17-3-8 Credits for certain nonresident taxpayers

Authority: IC 6-5.5-9-1
Affected: IC 6-5.5-2; IC 6-5.5-4

Sec. 8. (a) A nonresident taxpayer filing separately or a combined return is entitled to a credit against its FIT liability in the amount of direct net income tax, a franchise tax, or other tax measured by net income that is due for a taxable year to the nonresident taxpayer's domiciliary state if:

(1) the receipt of interest or other income from a loan or loan transaction is attributed both to the taxpayer's domiciliary state under that state's laws and also to Indiana under IC 6-5.5-4; and

(2) the principal amount of the loan is at least two million dollars ($2,000,000).

(b) The credit is available only in regard to loans which are in a principal amount of two million dollars ($2,000,000) or more as expressed in the loan document. There may be instances when a corporation extends many loans but only some of the loans meet the two million dollar ($2,000,000) qualifying limit. To determine the amount of tax attributable to the qualified loans, divide the receipts attributable to the qualified loans by the total receipts and multiply that fraction expressed as a percentage by the amount of the FIT due.

(c) The amount of the credit is equal to the lesser of the actual taxes paid to the domiciliary state for the loan transaction or the amount due to Indiana on the loan transaction.

(d) If the nonresident taxpayer's domiciliary state grants a credit for taxes paid to other states, the credit available for the purposes of Indiana's FIT is the net tax paid to the domiciliary state. The credit granted by Indiana's FIT must be reduced by the amount of credit granted by the taxpayer's domiciliary state.

(e) Rather than applying the credit, if the domiciliary state's method of calculating the tax base is similar to Indiana's method, but the domiciliary state's tax rate is higher than Indiana's tax rate, the nonresident corporation has the option of excluding the receipts attributable to Indiana from the numerator and denominator of the apportionment formula. However, the taxpayer must include in the return an estimate of the total of those receipts.

(f) The following are examples of credits for certain nonresident taxpayers:

(1) A nonresident taxpayer makes a two million dollar ($2,000,000) loan and the receipts from the loan are attributable to both Indiana and the taxpayer's domiciliary state. The domiciliary state grants a credit for taxes due to the state of Indiana. Assume both Indiana and the domiciliary state have the same tax rate. If the nonresident corporation owes taxes to Indiana in the amount of five thousand dollars ($5,000) and the domiciliary state grants a credit for such five thousand dollars ($5,000), then the tax liability to Indiana is five thousand dollars ($5,000), and the amount of the Indiana credit is zero (0).

(2) A nonresident taxpayer makes a two million dollar ($2,000,000) loan and the receipts from the loan are attributable to both Indiana and the taxpayer's domiciliary state. The domiciliary state grants a credit for taxes due to the state of Indiana. If the nonresident taxpayer owes taxes to Indiana in the amount of four thousand dollars ($4,000) and the taxpayer owes its domiciliary state a five thousand dollar ($5,000) tax liability, the domiciliary state would grant a credit only to the extent of the four thousand dollar ($4,000) tax due. The amount of Indiana's potential credit granted is reduced by four thousand dollar *[sic.]* ($4,000). Therefore, zero (0) credit is available to be used against the taxpayer's Indiana four thousand dollar ($4,000) tax liability.

(3) A nonresident taxpayer makes a two million dollar ($2,000,000) loan and the receipts from the loan are attributable to both Indiana and the taxpayer's domiciliary state. The domiciliary state does not grant a credit for taxes due to the state of Indiana. If the nonresident taxpayer owes taxes to Indiana in the amount of five thousand dollars ($5,000) and the taxpayer owes a three thousand dollar ($3,000) tax liability to its domiciliary state, the five thousand dollar ($5,000) Indiana tax liability would be reduced by three thousand dollars ($3,000).

(Department of State Revenue; 45 IAC 17-3-8; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1218)

45 IAC 17-3-9 Other credits that can be applied against the FIT

Authority: IC 6-5.5-9-1
Affected: IC 6-3-3-10; IC 6-3.1; IC 6-5.5

Sec. 9. The following credits are available to be taken for purposes of reducing a corporation's FIT liability:

(1) Enterprise zone employment expense credit (IC 6-3-3-10).
(2) Teacher's summer employment credit (IC 6-3.1-2).
(3) Donation of high technology equipment for schools credit (IC 6-3.1-3).
(4) Investment credit (IC 6-3.1-5).
(5) Enterprise zone loan interest credit (IC 6-3.1-7).
(6) Neighborhood assistance credit (IC 6-3.1-9).
(7) Industrial recovery tax credit (IC 6-3.1-11).
(8) Drug and alcohol abuse prevention credit (IC 6-3.1-12).

(Department of State Revenue; 45 IAC 17-3-9; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1219)

45 IAC 17-3-10 Attributing receipts for nonresident taxpayers and nonresident members of a unitary group

Authority: IC 6-5.5-9-1
Affected: IC 6-5.5-1-10; IC 6-5.5-4

Sec. 10. (a) As used in this article, the following definitions apply:
(1) "Receipts" includes all gross income as defined in Section 61 of the Internal Revenue Code. However, upon the disposition of assets such as securities and money market transactions, when derived from transactions and activities in the regular course of the taxpayer's trade or business, receipts are limited to the gain (as defined in Section 1001 of the Internal Revenue Code) that is recognized upon the disposition.
(2) "Money market instruments" means federal funds sold and securities purchased under agreements to resell, commercial paper, banker's acceptances, and purchased certificates of deposit and similar instruments.
(3) "Securities" means United States Treasury securities, obligations of United States government agencies and corporations, obligations of state and political subdivisions, corporate stock and other securities, participation in securities backed by mortgages held by United States or state government agencies, loans backed securities and similar investments.
(b) Attribution of receipts shall be as follows:
(1) Receipts from the lease or rental of real or tangible personal property must be attributed to Indiana if the property is located in Indiana.
(2) Receipts from the sale of an asset, tangible or intangible, must be apportioned in the manner that the income from the asset would be apportioned under this article.
(3) Receipts from the performance of fiduciary and other services must be attributed to the state in which the benefits of the services are consumed. If the benefits are consumed in more than one (1) state, the receipts from those benefits must be apportioned to Indiana on a pro rata basis according to the portion of the benefits consumed in Indiana.
(4) Receipts from the issuance of traveler's checks, money orders, or United States savings bonds must be attributed to the state in which the traveler's checks, money orders, or bonds are purchased.
(5) Receipts from investments of a financial institution in securities of this state and its political subdivisions, agencies, and instrumentalities must be attributed to Indiana. "Political subdivision" means a county, township, city, town, separate municipal corporation, special taxing district, or school corporation. "State agency" means a board, commission, department, division, bureau, committee, authority, military body, college, university, or other instrumentality of this state, but does not include a political subdivision or an instrumentality of a political subdivision.
(6) Interest income and other receipts from assets in the nature of loans or installment sales contracts that are primarily secured by or deal with real or tangible personal property must be attributed to Indiana if the security or sale property is located in Indiana.
(7) Interest income and other receipts from consumer loans not secured by real or tangible personal property must be attributed to Indiana if the loan is made to a resident of Indiana.
(8) Interest income and other receipts from commercial loans and installment obligations not secured by real or tangible personal property must be attributed to Indiana if the proceeds of the loan are to be applied in Indiana. If it cannot be determined where the funds are to be applied, the income and receipts are attributed to the state in which the business applied for the loan. As used in this section, "applied for" means initial inquiry (including customer assistance in preparing the loan application) or submission of a completed loan application, whichever occurs first.
(9) Interest income, merchant discount, and other receipts including service charges from financial institution credit card and travel and entertainment credit card receivables and credit cardholders' fees must be attributed to the state to which the card charges and fees are regularly billed.
(10) Interest income and other receipts from a participating financial institution's portion of participation loans must be attributed under this article. A participation loan is a loan in which more than one (1) lender is a creditor to a common borrower.
(11) Fee income and other receipts from letters of credit, acceptance of drafts, and other devices for assuring or guaranteeing loans of credit must be apportioned in the same manner as interest income and other receipts from commercial loans are apportioned.
(12) Any other receipts of gross income not specfically attributable to Indiana or to another taxing jurisdiction applying this subsection, shall be attributed to Indiana in the same proportion that aggregate receipts are attributed to Indiana under subdivisions 1 through 11.

(c) If a taxpayer has adjusted gross income from a trade or business subject to apportionment under this section and in addition has income not connected with that trade or business, the unconnected income must be allocated to its commercial domicile and therefore will not be included in either the numerator or denominator for purposes of determining the apportionment percentage. Intangible property is employed in a trade or business if the owner of the property holds it as a means of furthering the trade or business. Income from such intangible property is considered to be connected with the trade or business and is subject to apportionment. *(Department of State Revenue; 45 IAC 17-3-10; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1219)*

Rule 4. Other Taxpayers

45 IAC 17-4-1 Resident state chartered credit unions

Authority: IC 6-5.5-9-1
Affected: IC 6-5.5; IC 28-7-1-24

Sec. 1. (a) State chartered credit unions incorporated in Indiana are subject to the FIT. (See 45 IAC 7-2.) For purposes of computing the adjusted gross income of the credit union, adjusted gross income equals the total transfers to undivided earnings, minus dividends for that taxable year after statutory reserves are set aside under IC 28-7-1-24. In other words, adjusted gross income can be defined as net transfers to undivided earnings. No other deductions are permitted.

(b) A resident taxpayer's income is not apportioned to other states. Therefore, the taxpayer's adjusted gross income equals all of the taxpayer's adjusted gross income from whatever source derived.

(c) For purposes of computing the FIT liability, the adjusted gross income of the credit union is multiplied by the FIT rate.

(d) A copy of the Year End Call Report submitted to the National Credit Union Association must be included when filing the annual tax return. *(Department of State Revenue; 45 IAC 17-4-1; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1220)*

45 IAC 17-4-2 Nonresident state chartered credit unions

Authority: IC 6-5.5-9-1
Affected: IC 6-5.5; IC 28-7-1-24

Sec. 2. (a) Credit unions chartered in a state other than Indiana may be subject to the FIT under 45 IAC 17-2. For purposes of computing the adjusted gross income of the nonresident credit union, adjusted gross income is the total transfers to undivided earnings, minus dividends for the taxable year after statutory reserves are set aside under IC 28-7-1-24. In other words, adjusted gross income can be defined as net transfers to undivided earnings. No other deductions are permitted.

(b) For purposes of determining the statutory reserves under IC 28-7-1-24(e), the Indiana department of financial institutions may revise the statutory reserve requirement. The Indiana department of financial institutions has promulgated rules which allow the statutory reserves for Indiana purposes to coincide with the Federal Credit Union Act (12 U.S.C. 1762). Therefore, a nonresident state chartered credit union may determine its statutory reserves for purposes of the FIT by applying the reserve requirements of the Federal Credit Union Act.

(c) For purposes of computing the FIT liability, the adjusted gross income must be apportioned by dividing the total receipts attributable to transacting business in Indiana by the total receipts from transacting business in all taxing jurisdictions. This quotient, expressed as a percentage, is multiplied by the total adjusted gross income to arrive at the apportioned adjusted gross income which is multiplied by the FIT rate. *(Department of State Revenue; 45 IAC 17-4-2; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1221)*

45 IAC 17-4-3 Federally chartered credit unions; exemption

Authority: IC 6-5.5-9-1
Affected: IC 6-5.5

Sec. 3. Federal law prohibits the state taxation of federally chartered credit unions under the Federal Credit Union Act (12 U.S.C. 1768). *(Department of State Revenue; 45 IAC 17-4-3; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1221)*

45 IAC 17-4-4 Partnerships or trusts

Authority: IC 6-5.5-9-1
Affected: IC 6-5.5-2-8

Sec. 4. (a) Neither partnerships nor trust entities are subject to the FIT. However, partnerships with a corporate partner, and trusts which have a corporate grantor and beneficiary which are conducting the business of a financial institution, are required to file annual information returns. The information returns must be filed on a schedule provided by the department. The partnership or trust must calculate the tax liability as if the partnership or trust were a taxpayer for purposes of the FIT.

(b) If a partnership or trust that is commercially domiciled in Indiana is transacting the business of a financial institution in Indiana, and the partners or grantors and beneficiaries are nonresident corporations, the partnership or trust is responsible to withhold and remit the nonresident corporation's tax liability on its apportioned income if the nonresident corporation is otherwise not a taxpayer for purposes of the FIT. The apportioned income attributable to the corporate partner is the same percentage as its distributive share. The corporate partner which is a resident or nonresident and otherwise subject to the FIT is responsible for the FIT in accordance with the corporate partner's percentage share of the partnership or trust's adjusted gross income or apportioned income.

(c) If a resident corporate partner is otherwise not subject to the FIT, the corporate partner must pay the FIT liability attributable to its partnership income. The income attributed to the corporate partner's share which has been taxed under IC 6-5.5 would not be included in the income calculation for purposes of any other taxes under 45 IAC 17-2-5. For example, a nonresident partnership is conducting the business of a financial institution both within and without Indiana. Assume Corporation A owns sixty percent (60%) of the partnership and Corporation B owns forty percent (40%) of the partnership. Further assume that eighty percent (80%) of the partnership's receipts are attributable to Indiana and twenty percent (20%) of the partnership's receipts are attributable to other states. Corporation A's distributive share of income is forty-eight percent (48%) (sixty percent (60%) multiplied by eighty percent (80%)) of the total adjusted gross income. Corporation B's distributive share is thirty-two percent (32%) (forty percent (40%) multiplied by eighty percent (80%)) of the total adjusted gross income for purposes of attributing income to the corporate partners. *(Department of State Revenue; 45 IAC 17-4-4; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1221)*

45 IAC 17-4-5 Investment companies

Authority: IC 6-5.5-9-1
Affected: IC 6-5.5-1-2

Sec. 5. (a) For purposes of the FIT, an "investment company" means a person, copartnership, association, or corporation, whether domestic or foreign, that:

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

(2) solicits or receives a payment and issues in exchange for such payment an investment contract as evidenced by:

(A) a so-called bond;
(B) a share;
(C) a coupon;
(D) a certificate of membership;
(E) an agreement;
(F) a pretended agreement; or
(G) another evidence of obligation;

entitling the holder to anything of value at some future date, if the gross payments to the holder equal at least fifty percent (50%) of the sum of the company's gross payments on all investment contracts plus the company's gross income from all other sources, except dividends from subsidiaries, for the taxable year.

The term "gross payments" means the amount received during the taxable year on outstanding investment contracts, plus interest and dividends earned on those contracts. The interest and dividends earned on investment contracts are determined by prorating the total dividends and interest for the taxable year in question in the same proportion that certificate reserves, as defined by the Investment Company Act of 1940, are to total assets.

(b) To qualify as a taxpayer, the investment company must satisfy the eighty percent (80%) test under 45 IAC 17-2. Regardless of whether or not a corporation meets the definition of an investment company, a corporation which makes investments may be a taxpayer if the eighty percent (80%) test is satisfied.

(c) In the case of an investment company, adjusted gross income means the company's federal taxable income multiplied by the quotient of:

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

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

(Department of State Revenue; 45 IAC 17-4-5; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1222)

Rule 5. Reporting

45 IAC 17-5-1 Required reporting

Authority: IC 6-5.5-9-1
Affected: IC 6-5.5; IC 6-8.1-6-2

Sec. 1. (a) Annual returns are required to be filed with the department by every taxpayer subject to the FIT, including any taxpayer which has a loss for that taxable year. A unitary group is required to file only one (1) return covering all members of the unitary group. A schedule of all members of the unitary group must be attached to the annual return. A copy of the taxpayer's federal income tax return which has been filed with the Internal Revenue Service for the same taxable year must accompany the Indiana annual return.

(b) The annual return must be filed with the department on or before the fifteenth day of the fourth month following the close of the taxable year. The department will recognize an extension of time which has been granted by the Internal Revenue Service, provided that such extension of time can be verified through the Internal Revenue Service, and a copy of the federal application for extension of time is attached to the Indiana annual return.

(c) If an additional extension period is needed for purposes of filing Indiana's annual return, and such time exceeds the federal extension period granted, the taxpayer is required to file a petition for a separate Indiana extension of time in accordance with IC 6-8.1-6-2.

(d) Each taxpayer shall report and submit a quarterly estimated tax payment to the department equal to twenty-five percent (25%) of the taxpayer's total estimated tax liability for the taxable year. The quarterly estimated payment is due on or before the last day of the month following the close of each quarter of the taxable year.

(e) Failure to make quarterly estimated payments at least equal to:

(1) twenty percent (20%) of the final tax liability for the taxable year; or

(2) twenty-five percent (25%) of the final tax liability for the taxpayer's previous taxable year;

will result in a ten percent (10%) penalty imposed upon the difference between the actual amount paid and the amount required to be paid for each quarter. *(Department of State Revenue; 45 IAC 17-5-1; filed Jan 22, 1991, 4:55 p.m.: 14 IR 1222)*

ARTICLE 18. CHARITY GAMING

Rule 1. Definitions

45 IAC 18-1-1 Applicability

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-6

Sec. 1. In addition to the definitions in IC 4-32-6, the definitions in this rule apply throughout this article. *(Department of State Revenue; 45 IAC 18-1-1; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1368)*

45 IAC 18-1-2 "Calendar month" defined

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-6

Sec. 2. "Calendar month" means a month named in the Gregorian calendar beginning with the first day of such month and ending with the last day of such month. *(Department of State Revenue; 45 IAC 18-1-2; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1368)*

45 IAC 18-1-3 "Calendar week" defined
Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-6

Sec. 3. "Calendar week" means a block of seven (7) days registered on a calendar beginning with a Sunday and ending with a Saturday. *(Department of State Revenue; 45 IAC 18-1-3; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1369)*

45 IAC 18-1-4 "Calendar year" defined
Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-6

Sec. 4. "Calendar year" means the period from January 1 to December 31 inclusive. *(Department of State Revenue; 45 IAC 18-1-4; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1369)*

45 IAC 18-1-5 "Day" defined
Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-6

Sec. 5. "Day" means the twenty-four (24) hours that begin with the passing of midnight and ends at the succeeding midnight. *(Department of State Revenue; 45 IAC 18-1-5; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1369)*

45 IAC 18-1-6 "Department" defined
Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-6

Sec. 6. "Department" means the department of state revenue. *(Department of State Revenue; 45 IAC 18-1-6; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1369)*

45 IAC 18-1-7 "Qualified organization" defined
Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-6; IC 6-1.1-10; IC 6-2.1-3

Sec. 7. (a) "Qualified organization" means a bona fide religious, educational, senior citizens, veterans, or civic organization operating in Indiana that meets the following requirements:

(1) It must operate without profit to the organization's members.

(2) It must have been in existence in Indiana for at least five (5) years or affiliated with an Indiana parent organization that has been in existence for at least five (5) years.

(3) It must be exempt from taxation under one (1) of the following statutes:

(A) The property tax under IC 6-1.1-10.

(B) The gross income tax under IC 6-2.1-3.

(C) The federal income tax under Section 501 of the Internal Revenue Code.

(4) It must be currently registered with the department as a not-for-profit organization.

(b) For purposes of 45 IAC 18-2-1(c) only, a qualified organization also includes the following:

(1) A hospital licensed under IC 16-10-1 *[IC 16-10 was repealed by P.L.2-1993, SECTION 209, effective July 1, 1993.]*.

(2) A health facility licensed under IC 16-10-4 *[IC 16-10 was repealed by P.L.2-1993, SECTION 209, effective July 1, 1993.]*.

(3) A psychiatric facility licensed under IC 16-13-2 *[IC 16-13 was repealed by P.L.2-1992, SECTION 897, effective February 14, 1992.]*.

(c) A qualified organization also includes a bona fide political organization operating in Indiana if it is operated primarily for an exempt function under Section 527 of the Internal Revenue Code. *(Department of State Revenue; 45 IAC 18-1-7; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1369)*

45 IAC 18-1-8 "Value" defined

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-9

Sec. 8. The term "value", when used in connection with the word "prize", means the retail price of the property given as the prize when the prize is other than money. This definition applies whether the property given as the prize is purchased or donated for the event. *(Department of State Revenue; 45 IAC 18-1-8; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1369)*

Rule 2. Application Procedures for Licensee

45 IAC 18-2-1 Application by qualified organization

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32

Sec. 1. (a) To obtain a license to operate an allowable event, a qualified organization must submit a written application on a form prescribed by the department.

(b) The application shall include the following information:

(1) The name and address of the organization.

(2) The names and addresses of the officers of the organization.

(3) The type of event that the organization proposes to conduct.

(4) The location at which the organization will conduct the event.

(5) The dates and time for the proposed event.

(6) Sufficient facts for the department to determine that the organization is a qualified organization, including, but not limited to, the following:

(A) The organization's not-for-profit number.

(B) A letter from the Internal Revenue Service stating that the organization is exempt from taxation under Section 501 of the Internal Revenue Code.

(C) Proof that the organization has been in existence for five (5) or more years.

(D) A copy of the organization's bylaws or articles of incorporation.

(E) The name of each proposed operator and sufficient facts to determine that the person is qualified to be an operator.

(F) A sworn statement by the presiding officer and secretary of the organization attesting to the eligibility of the organization, including the nonprofit character of the organization.

(G) Any other information that the department may require.

(c) A license is not required if the following conditions are met:

(1) A fee is not charged for the event.

(2) The value of all prizes awarded does not exceed one hundred dollars ($100).

(d) Although a license is not required under subsection (c), a qualified organization is required to obtain an exemption letter from the department before holding such an event. The department may issue the exemption letter on an annual basis if the qualified organization shows that it holds such an event on a continuous basis throughout the year.

(e) If an event meets the conditions required by subsection (c) and an exemption letter is issued under subsection (d), 45 IAC 18-3-2 shall not apply to the conducting of that event. *(Department of State Revenue; 45 IAC 18-2-1; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1369)*

45 IAC 18-2-2 Application by a manufacturer or distributor

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32

Sec. 2. (a) An entity is required to be licensed to manufacture, distribute, or sell supplies, devices, or equipment to be used in charity gaming in Indiana. To obtain an annual license, a manufacturer or distributor must submit a written application on a form prescribed by the department.

(b) The manufacturer's application shall include the following information:

(1) The name and address of the applicant, and the name and address of each of its separate locations where items are manufactured.

(2) The name and home address of all the owners of the applicant's business if it is not a corporation and, if it is a corporation, the name and address of the officers of the corporation and of each person owning at least ten percent (10%) of any class of stock of the corporation.

(3) The name, business address, and home address of the registered agent for service in Indiana if the applicant is a corporation not domiciled in Indiana.

(4) Whether the applicant or any person required to be named in the application is an owner, officer, director, or employee of any other entity that would be licensed under this rule.

(5) A full description of the type of gaming supplies or related equipment that will be manufactured.

(6) The name of each state where the applicant has been licensed to manufacture, supply, or distribute gaming supplies or related equipment, the license numbers, the period of time licensed, and whether or not a license has ever been suspended, revoked, or voluntarily forfeited, and the reason for that action.

(c) A distributor must purchase all supplies and equipment to be used in charity gaming in Indiana from a licensed manufacturer or another licensed distributor. The distributor's application shall include the following information:

(1) The full name and address of the applicant.

(2) The name and address of each location operated by the distributor from which bingo supplies are stored.

(3) The name and address of each owner, if the applicant is not a corporate distributor.

(4) The name and address of each shareholder who owns ten percent (10%) or more of any class of stock.

(5) The name and address of the registered agent for service in Indiana, if it is a corporation not domiciled in Indiana.

(6) A full description of the type of gaming supplies that will be distributed.

(7) The name of each state where the applicant has been a licensed distributor, the license number, the period of time licensed, and whether or not a license has ever been suspended or revoked, and the reason for that action.

(8) The name and address of every manufacturer from which purchases are made to be distributed in Indiana.

(d) An entity that wishes to both manufacture and distribute supplies, devices, or equipment to be used in charity gaming in Indiana must possess a manufacturer's license and a distributor's license. *(Department of State Revenue; 45 IAC 18-2-2; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1370)*

45 IAC 18-2-3 License fees

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-9; IC 4-32-11

Sec. 3. (a) Except for the renewal fee for an annual bingo license, all license fees must be paid at the time the application is submitted to the department. The renewal fee for an annual bingo license must be paid within thirty (30) days after the end of the previous license period.

(b) The annual license fee for a manufacturer is three thousand dollars ($3,000).

(c) The annual license fee for a distributor is two thousand dollars ($2,000).

(d) The initial fee on each separate license held by a qualified organization is twenty-five dollars ($25).

(e) The renewal fee on each separate license held by a qualified organization is based on the total gross receipts from allowable events and related activities in the preceding year or, if the qualified organization held a license under IC 4-32-9-6 through IC 4-32-9-10, the total gross receipts from the preceding event and related activities, according to the following schedule:

Gross Receipts		
At Least	But Less Than	Renewal Fee
$0	$15,000	$25
$15,000	$25,000	$75
$25,000	$50,000	$200
$50,000	$75,000	$350
$75,000	$100,000	$600
$100,000	$150,000	$900
$150,000	$200,000	$1,200

$200,000	$250,000	$1,500
$250,000	$300,000	$1,800
$300,000	$400,000	$2,500
$400,000	$500,000	$3,250
$500,000	$750,000	$5,000
$750,000	$1,000,000	$6,750
$1,000,000	$1,250,000	$8,500
$1,250,000	$1,500,000	$10,000
$1,500,000	$1,750,000	$12,000
$1,750,000	$2,000,000	$14,000
$2,000,000	$2,250,000	$16,250
$2,250,000	$2,500,000	$18,500
$2,500,000	$3,000,000	$22,500
$3,000,000		$25,000

(f) If an organization does not renew its license, but an auxiliary or affiliated group applies for a license, the application shall be considered a renewal and subject to the fees stated in subsection (e).

(g) If an organization held a special license for a single event, the license fee for a subsequent similar event is based on the gross receipts from the preceding allowable event and related activities, even if the subsequent event is held during the same year of operation.

(h) The gross receipts from the sale of pull-tabs, punchboards, and tip boards are included in total gross receipts for purposes of the renewal fee. Sales of other tangible personal property sold specifically at the event will be included in gross receipts as a related activity, for example, the qualified organization sells key chains, hot dogs, and drinks in the same area as the event being held. This would be considered a related activity because the sale took place as a result of the allowable event. *(Department of State Revenue; 45 IAC 18-2-3; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1370)*

45 IAC 18-2-4 Charity gaming licenses

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32

Sec. 4. (a) A readable photocopy of a license is required to be prominently displayed at the facility where the event is being held. The original license must be available for inspection upon request at all times. In addition to the photocopy, a legible sign of adequate dimension must be prominently posted during an event giving the name of the qualified organization, its license number, and the expiration date of the license.

(b) Application for the following licenses may be made by a qualified organization:

(1) A bingo license which permits the licensee to conduct up to three (3) bingo events per calendar week. This license permits the licensee to conduct door prize drawings and sell pull-tabs, punchboards, and tip boards at the bingo event. An organization cannot have more than one (1) allowable event per day. The bingo license is in effect for one (1) year from the date of issuance.

(2) A special bingo license which permits the licensee to conduct one (1) bingo event at only one (1) time and location. This license can be renewed at the discretion of the department upon reapplication and payment of the license fee based on the preceding event.

(3) A charity game night license which permits the licensee to conduct one (1) charity game night at one (1) location. This license permits the licensee to conduct a card game, a dice game, a roulette wheel, and a spindle. This license also permits door prize drawings and the sale of pull-tabs, punchboards, and tip boards. An organization is limited to four (4) charity game nights per calendar year.

(4) A raffle license which permits the licensee to conduct a raffle at only one (1) time and location. This license also permits the licensee to conduct door prize drawings and to sell pull-tabs, punchboards, and tip boards. However, a license is not required if the total market value of the prizes awarded at the raffle event does not exceed one thousand dollars ($1,000).

(5) A door prize license which permits the licensee to conduct one (1) door prize event and to sell pull-tabs, punchboards,

and tip boards. However, a license is not required if the total market value of the prizes awarded at the door prize event does not exceed one thousand dollars ($1,000).

(6) A festival license which permits the licensee to conduct bingo events, charity game nights, one (1) raffle event, door prize events, and sell pull-tabs, punchboards, and tip boards at the festival. The festival can only be held once a calendar year and cannot exceed four (4) consecutive days. The raffle event conducted at a festival is not subject to any prize limitations. If the organization has a festival, the organization is precluded from conducting any further charity game nights during the year, unless the festival license is issued for less than four (4) days. Also, a festival license will be issued for less than four (4) days if an organization has previously been granted one (1) or more charity game night licenses.

(c) A qualified organization may hold more than one (1) license at the same time. However, an organization cannot have a bingo event and a raffle at the same event without permission from the department. A bingo event and raffle event may only be held together once a calendar year. *(Department of State Revenue; 45 IAC 18-2-4; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1371; errata filed Feb 12, 1993, 5:00 p.m.: 16 IR 1832)*

Rule 3. Charity Gaming

45 IAC 18-3-1 Allowable events

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32

Sec. 1. (a) A qualified organization must hold an allowable event in the county where its principal office is located.

(b) The following events are allowed:

(1) A bingo event. As used in this article, "bingo" means a game conducted in the following manner:

(A) Each participant receives at least one (1) card, board, pad, or piece of paper marked off into twenty-five (25) squares that are arranged in five (5) vertical rows of five (5) squares each, with each row designated by a single letter, and each box containing a single numeral, from one (1) to seventy-five (75), except the center box, which is always marked with the word "free".

(B) As the caller of the game announces a letter and number combination, each player covers the square corresponding to the announced number, letter, or combination of numbers and letters.

(C) The winner of each game is the player who is the first to properly cover a predetermined and announced pattern of squares upon the card used by the player.

(2) A charity game night. As used in this article, "charity game night" means an event at which wagers are placed upon the following permitted games of chance through the use of imitation money:

(A) A card game.

(B) A dice game.

(C) A roulette wheel.

(D) A spindle.

The term does not include an event at which wagers are placed on bookmaking, a slot machine, a one-ball machine, a pinball machine that awards anything other than an immediate and unrecorded right of replay, a policy or numbers game, or a banking or percentage game played with cards or counters.

(3) A door prize drawing. As used in this article, "door prize" means a prize awarded to a person based solely upon the person's attendance at an event or the purchase of a ticket to attend an event.

(4) A festival. As used in this article, "festival" means an event at which a qualified organization is authorized to conduct bingo events, charity game nights, one (1) raffle event, door prize events, and sell pull-tabs, punchboards, and tip boards.

(5) A sale of pull-tabs. As used in this article, "pull-tab" means a game conducted in the following manner:

(A) A single folded or banded ticket or a two (2) ply card with perforated break-open tabs is bought by a player from a qualified organization.

(B) The face of each card is initially covered or otherwise hidden from view, concealing a number, letter, symbol, or set of letters or symbols.

(C) In each set of tickets or cards, a designated number of tickets or cards have been randomly designated in advance as winners.

(D) Winners or potential winners, if the game includes the use of a seal, are determined by revealing the faces of tickets

or cards. The player may be required to sign the player's name on numbered lines provided, if a seal is used.

(E) The player with a winning pull-tab ticket or numbered line receives the prize stated on the flare from the qualified organization. The prize must be clearly and fully described on the flare or on the game information side of the card.

(6) A sale of punchboards. As used in this article, "punchboard" means a card or board that contains a grid or section that hides the random opportunity to win a prize based on the results of punching a single section to reveal a symbol or prize amount.

(7) A raffle event. As used in this article, "raffle" means the selling of tickets or chances to win a prize awarded through a random drawing.

(8) A sale of tip boards. As used in this article, "tip board" means a board, placard, or other device that is marked off in a grid or columns, with each section containing a hidden number or other symbol that determines a winner. The prize and the price of each tip must be described on the board.

(c) A sale of pull-tabs, punchboards, or tip boards may be conducted by a qualified organization at any allowable event. Also, a qualified organization may sell pull-tabs, punchboards, or tip boards at any time on the premises owned or leased by the organization and regularly used by the organization as long as the organization possesses a valid bingo license. *(Department of State Revenue; 45 IAC 18-3-1; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1372)*

45 IAC 18-3-2 Conducting an allowable event

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32

Sec. 2. (a) The qualified organization must purchase all bingo supplies, devices, and equipment from an entity licensed by the department to sell, distribute, or manufacture the supplies. Pull-tabs, punchboards, and tip boards must be purchased from a licensed entity, except for those purchased from the Hoosier Lottery.

(b) The purchase of Hoosier Lottery pull-tabs by the qualified organization is permitted, if the qualified organization is licensed by the Hoosier Lottery to sell the items. The provisions of IC 4-32 do not apply to the purchase and sale of Hoosier Lottery pull-tabs by a qualified organization.

(c) An organization cannot enter into an agreement with another person or entity to conduct the event for the organization.

(d) Only one (1) organization can conduct an event on the same day at the same location. An organization is limited to three (3) allowable events in a calendar week. An organization cannot lease its premises to another qualified organization if this would result in more than three (3) events being held on such premises during a calendar week. Unless otherwise authorized by the department, an organization is limited to one (1) allowable event each day. An event or events must not be held on more than two (2) consecutive days, except for a festival. An event that starts before midnight and continues after midnight is the same event for purposes of applying this article. Except for a festival, an event cannot be scheduled for more than eight (8) consecutive hours. There shall be a six (6) hour break between events, except for the sale of pull-tabs, punchboards, or tip boards. A charity game night cannot be held more than four (4) times in a calendar year.

(e) Rent paid for leased facilities cannot exceed two hundred dollars ($200) per day and cannot be based on the revenue generated by the event. Additional moneys shall not be paid for utilities, janitorial expenses, security, set up and tear down expenses, or any other expenses. These expenses must be included in the two hundred dollar ($200) rent limitation per day. The facility cannot be leased for more than two (2) days in a calendar week. A facility is owned when an organization holds a fee simple estate in the facility. A facility is leased when an organization enters into a written agreement to occupy the facility which gives rise to the relationship of lessor and lessee, regardless of the terms of the lease. The lease of a facility for an allowable event must be in writing.

(f) Except for a festival, an organization must not pay more than fifty dollars ($50) in total for personal property that may be used by the organization to conduct the event. This includes the rental of tables, chairs, and related equipment owned and leased by the lessor who is leasing the facility to the qualified organization for an allowable event. The rental of tangible personal property cannot be based on the revenue generated by the event. For a festival event, the fifty dollar ($50) limitation only applies to the rental of gambling related equipment and supplies.

(g) A qualified organization may advertise an allowable event. An advertisement in printed media must contain the name and license number, in bold print, of the organization conducting the event. An advertisement in broadcast media must announce, at the end of the advertisement, the name and license number of the organization conducting the event. A television announcement of the name and license number of the organization conducting the event may be in the form of an audio, a visual, or both.

(h) An organization cannot sell a pull-tab, punchboard, or tip board ticket for more than one dollar ($1).

(i) An organization may not permit a person under the age of eighteen (18) years of age to play or participate in an allowable event. However, a person under eighteen (18) years of age may play or participate in nongambling activities (such as ring toss, fishing, ball throws, etc.) associated with an allowable event. Also, an organization cannot pay the operator or workers of an allowable event, including tips from the players. A legible sign of adequate dimension must be prominently posted during an event stating that the operator and workers are not allowed to accept tips. An operator is the person responsible for conducting an allowable event for the qualified organization. A worker is a person who helps or participates in any manner in conducting an allowable event.

(j) The organization must use operators and workers who are qualified members of the organization. An operator has to have been a member in good standing for at least one (1) year, and a worker has to have been a member in good standing for at least thirty (30) days. If the qualified organization has an auxiliary or affiliated group, and the auxiliary or affiliated group is not a licensed qualified organization, then members of the auxiliary or affiliated group will be considered members of the qualified organization for purposes of operating or working an allowable event.

(k) A person cannot be an operator or a worker if that person has been convicted of a felony in the last ten (10) years. Also, an employee of the department or anyone living in the same household of such employee may not be an operator or a worker. Although the operator and the workers may not receive any payment for conducting or assisting at an allowable event, the organization is permitted to provide meals or a recognition dinner for the operator and the workers. Neither the operator nor a worker is permitted to participate in the allowable event that is being held. Also, an operator is prohibited from being an operator for more than one (1) qualified organization in a calendar month.

(l) The prize limit for one (1) bingo game is one thousand dollars ($1,000). The prize limit for a bingo event is six thousand dollars ($6,000). However, the department may permit a qualified organization to conduct two (2) bingo events a year where the prize limit for the event is ten thousand dollars ($10,000). Also, the value of all door prizes awarded at a bingo event may not exceed one thousand five hundred dollars ($1,500).

(m) A raffle event that is not conducted at another allowable event is not subject to any prize limitations concerning the raffle. Generally, if the raffle event is conducted at another allowable event, the total prize for the raffle event may not exceed five thousand dollars ($5,000). However, the department may allow a qualified organization to conduct a raffle event at another allowable event where the total prize for the raffle event may not exceed twenty-five thousand dollars ($25,000). Also, if the raffle is conducted at a festival, it is not subject to any prize limitations concerning the raffle. The value of all door prizes awarded at a raffle event may not exceed one thousand five hundred dollars ($1,500).

(n) The total prizes awarded for one (1) pull-tab, punchboard, or tip board game may not exceed two thousand dollars ($2,000). The total prize, including the prize value of a seal if one is used, for one (1) ticket for a pull-tab, punchboard, or tip board may not exceed three hundred dollars ($300).

(o) The value of all door prizes awarded at a door prize event may not exceed five thousand dollars ($5,000). However, the department may permit a qualified organization to conduct one (1) door prize event a year where the total prize awarded may not exceed twenty thousand dollars ($20,000).

(p) For the exemptions from normal prize limits provided by subsection (l), (m), or (o), a qualified organization must submit a written application on a form prescribed by the department stating the date, time, and location of the event at least fifteen (15) days prior to the date of the event. The authorization to exceed the normal prize limits must be prominently displayed at the time and location of the event.

(q) All net proceeds from an allowable event must be used for the lawful purpose of the qualified organization. *(Department of State Revenue; 45 IAC 18-3-2; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1373; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2231)*

45 IAC 18-3-3 Product specifications

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32

Sec. 3. (a) A pull-tab must contain the following specifications:

(1) A single folded or banded ticket or a two (2) ply card with perforated break-open tabs.

(2) The face of each card is initially covered or otherwise hidden from view, concealing a number, letter, symbol, or set of letters or symbols.

(3) In each set of tickets or cards, a designated number of tickets or cards have been randomly designated in advance as winners.

(4) Winners or potential winners, if the game includes the use of a seal, are determined by revealing the faces of tickets or cards.

(5) The prize must be clearly and fully described on the flare or on the information side of the card.

(b) In addition to the requirements of subsection (a), all pull-tabs manufactured or distributed for sale in Indiana must meet the "Standards on Pull-Tabs" adopted by the North American Gaming Regulators Association on October 12, 1991, and as later amended.

(c) A punchboard is a card or board that contains a grid or section that hides the random opportunity to win a prize based on the results of punching a single hole to reveal a symbol or prize amount.

(d) A tip board is a board, placard, or other device that is marked off in a grid or columns, with each section containing a hidden number or other symbol that determines a winner.

(e) A serial number consisting of at least five (5) characters must be printed on each item manufactured and sold. *(Department of State Revenue; 45 IAC 18-3-3; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1374)*

Rule 4. Record Keeping Requirements

45 IAC 18-4-1 Records of qualified organization

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32

Sec. 1. (a) A qualified organization must maintain adequate records of all financial aspects of a qualified event and report such information to the department on forms prescribed by the department. The organization must set up a separate account to account for all proceeds and expenditures of the qualified event. The records that must be kept include the gross receipts from each type of activity conducted at the allowable event, the prize payout, and the net receipts to the organization. Also, accountable are any rental costs associated with conducting the allowable event, including, but not limited to, a facility lease and the lease of tangible personal property.

(b) The reports are due thirty (30) days after the expiration date listed on the annual bingo license or, in the case of a special event license, ten (10) days after the special event is concluded. *(Department of State Revenue; 45 IAC 18-4-1; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1375)*

45 IAC 18-4-2 Records of manufacturer or distributor

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32

Sec. 2. (a) An entity licensed as a manufacturer or distributor must keep records satisfactory to the department. The records must include the following:

(1) Sales invoices, including the following:

(A) Each licensee must use a general sales invoice which is:

(i) numbered consecutively; and

(ii) prepared in at least two (2) parts, one being issued to the customer and the other retained in an invoice file.

(B) Each licensee must use a general sales invoice which sets out the following information:

(i) The date of sale.

(ii) The customer name and business address.

(iii) A full description of each item sold, including the serial numbers of the products sold.

(iv) The quantity and sales price of each item.

(v) The manufacturer's or distributor's license number.

(vi) The customer's license number.

(vii) The gaming card excise tax due on the sale.

(2) Credit memoranda prepared in the same detail as sales invoices.

(3) A sales journal containing at least the following, by calendar month:

(A) The date of sale.

(B) The invoice number of the sale.

(C) The customer name or account number.
(D) The total amount of the invoice.
(E) The total amount of the gaming card excise tax due on the sale.
(4) A complete list of the persons representing the licensee.
(5) Purchase records documenting that all bingo supplies, equipment, pull-tabs, punchboards, and tip boards were purchased from either a licensed manufacturer or another licensed distributor.
(b) A serial number printed on an item sold must be identifiable with the sales invoice reflecting the sale of the specific item.
(c) The gross amount of sales to each customer must be kept on a calendar month basis.
(d) Records are required to be maintained until the later of the following:
(1) Four (4) years after the year in which they are created.
(2) The end of the audit if such records are under audit.
(Department of State Revenue; 45 IAC 18-4-2; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1375)

Rule 5. Taxation

45 IAC 18-5-1 Income and sales taxes

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32; IC 6-2.1; IC 6-2.5; IC 6-3; IC 6-3.5

Sec. 1. (a) Unless otherwise taxable by federal or state law, the income from an allowable event that is used for the lawful purpose of the qualified organization will be considered related income and therefore exempt from the adjusted gross income tax and supplemental net income tax.

(b) Unless otherwise provided by IC 6-2.1, the taxation of receipts from charity gaming activities for gross income tax purposes will depend upon the exempt status of the qualified organization. Generally, a wholly exempt organization would not be taxable on such receipts and a partially exempt organization would be taxable on such receipts for gross income tax purposes.

(c) If an organization conducts any kind of illegal activity such as a poker machine, slot machine, or numbers game, the income will be considered unrelated income and subject to the gross income tax, adjusted gross income tax, and supplemental net income tax, unless otherwise not taxable under federal or state law.

(d) The fees charged for participating in an allowable event are consideration paid for a chance to win and not a sale of tangible personal property. Therefore, such fees will not be subject to the Indiana sales and use tax.

(e) Local taxes, regardless of type, may not be imposed on the operations or sales authorized by this article. *(Department of State Revenue; 45 IAC 18-5-1; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1375)*

45 IAC 18-5-2 Gaming card excise tax

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-15

Sec. 2. (a) An excise tax is imposed on the distribution of pull-tabs, punchboards, and tip boards in the amount of ten percent (10%) of the wholesale price for the pull-tabs, punchboards, or tip boards that are sold to a qualified organization. The tax is effective June 1, 1992, for all sales that occur after May 31, 1992.

(b) Sales of bingo supplies and bingo equipment by manufacturers or distributors are not subject to the gaming card excise tax.

(c) A licensed entity supplying pull-tabs, punchboards, or tip boards is liable for the tax. The tax is imposed at the time the licensed entity:
(1) brings or causes the pull-tabs, punchboards, or tip boards to be brought into Indiana for distribution;
(2) manufactures pull-tabs, punchboards, or tip boards in Indiana for distribution; or
(3) transports pull-tabs, punchboards, or tip boards to qualified organizations in Indiana for resale by those qualified organizations.

(d) The gaming card excise tax is due twenty (20) days after the end of the calendar month in which the tax is imposed. It shall be remitted with the forms prescribed by the department.

(e) All payments must be in the form of a check, a draft, or another financial instrument approved by the department prior

to payment.

(f) The department may, at any time, perform an audit of the books of a licensed entity to ensure compliance with IC 4-32-15. *(Department of State Revenue; 45 IAC 18-5-2; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1376)*

Rule 6. Penalties

45 IAC 18-6-1 Civil penalties

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-12

Sec. 1. (a) For violation of a provision of this article, the department may do any of the following:

(1) Suspend or revoke a license.

(2) Lengthen a period of suspension of a license.

(3) Impose a civil penalty of:

(A) not more than one thousand dollars ($1,000) for the first violation;

(B) not more than two thousand five hundred dollars ($2,500) for the second violation; or

(C) not more than five thousand dollars ($5,000) for each additional violation.

(4) Impose the civil penalty for each day the violation continues.

(5) Impose an additional penalty of not more than one hundred dollars ($100) for each day the original penalty goes unpaid.

(b) The proposed action of the department to impose a civil penalty under this section is subject to review under section 3 of this rule. *(Department of State Revenue; 45 IAC 18-6-1; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1376)*

45 IAC 18-6-2 Criminal penalties

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-12; IC 35-50-2-7; IC 35-50-3-3

Sec. 2. (a) Except as provided in subsection (b), a person or an organization that violates a provision of this article commits a Class B misdemeanor.

(b) An individual, a corporation, a partnership, or other association that enters into a contract or other agreement with a qualified organization to conduct an allowable event for the benefit of the organization commits a Class D felony. *(Department of State Revenue; 45 IAC 18-6-2; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1376)*

45 IAC 18-6-3 License revocation

Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32; IC 6-8.1

Sec. 3. (a) The proposed action of the department to impose a civil penalty under this article is subject to review under IC 6-8.1. However, the licensee has only seventy-two (72) hours from its receipt of the decision, intended decision, or other action to file a written protest. Except as provided in subsection (b), as long as the matter is under protest, the licensee can continue to operate until all administrative appeals have been exhausted.

(b) The department may determine at any time that an emergency exists that requires the immediate termination of a license. Effective with the receipt of the department's decision to terminate its license, a licensee must cease all operations that were previously authorized under the license.

(c) An emergency requiring the immediate termination of a license will be deemed to exist under any of the following circumstances:

(1) The information provided on the application for license is found to be false or misleading.

(2) The appropriate fees are not paid.

(3) An entity other than the qualified organization is conducting the allowable event.

(4) The qualified organization is exceeding its allowable expenditures with respect to an allowable event.

(5) The qualified organization is exceeding the number of days that it can conduct an allowable event.

(6) The organization has conducted an allowable event at the same place and on the same day as another qualified

organization.

(7) Net proceeds are being used for purposes other than the lawful purposes of the organization.

(8) Accurate reports are not being filed with the department in a timely manner.

(9) Receipts and expenditures from an allowable event are not being kept in a separate and segregated account set up for that purpose.

(10) An allowable event is being held in a county other than where the qualified organization's principal office is located.

(11) An operator or worker does not meet the requirements of IC 4-32.

(12) Prizes awarded are exceeding the limitations imposed by IC 4-32.

(13) Any other violation of IC 4-32 or this article considered to be of a serious nature by the department.

(d) If a licensee does not file a formal protest of the department's proposed termination of its license within the time limit imposed by subsection (a), then such inaction may be deemed an admission of the alleged violation and the department may issue an immediate termination of the license.

(e) The license of a manufacturer or distributor shall be terminated if there is a change in ownership and the department determines that an undesirable party is assuming the privileges of the license held by the manufacturer or distributor. *(Department of State Revenue; 45 IAC 18-6-3; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1376)*

ARTICLE 19. CONTROLLED SUBSTANCE EXCISE TAX

Rule 1. Definitions

45 IAC 19-1-1 Applicability

Authority: IC 6-7-3-12; IC 6-8.1-3-3
Affected: IC 6-7-3

Sec. 1. The definitions in this rule apply throughout this article. *(Department of State Revenue; 45 IAC 19-1-1; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1718)*

45 IAC 19-1-2 "Controlled substance" defined

Authority: IC 6-7-3-12; IC 6-8.1-3-3
Affected: IC 6-7-3-1; IC 35-48-2

Sec. 2. (a) Except as provided in subsection (b), "controlled substance" means a drug, substance, or immediate precursor listed in IC 35-48-2-4, IC 35-48-2-6, IC 35-48-2-8, IC 35-48-2-10, and IC 35-48-2-12.

(b) A controlled substance does not include a drug, substance, or immediate precursor that has been reclassified, by an adopted rule of the Indiana state board of pharmacy, as a substance that is not a controlled substance. *(Department of State Revenue; 45 IAC 19-1-2; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1718)*

45 IAC 19-1-3 "Delivery" defined

Authority: IC 6-7-3-12; IC 6-8.1-3-3
Affected: IC 6-7-3-2

Sec. 3. "Delivery" means an actual or constructive transfer from one (1) person to another of a controlled substance, whether or not there is an agency relationship, or the organizing or supervising of such a transfer. *(Department of State Revenue; 45 IAC 19-1-3; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1718)*

45 IAC 19-1-4 "Department" defined

Authority: IC 6-7-3-12; IC 6-8.1-3-3
Affected: IC 6-7-3-3

Sec. 4. "Department" means the department of state revenue. *(Department of State Revenue; 45 IAC 19-1-4; filed Feb 12,*

1993, 5:00 p.m.: 16 IR 1718)

45 IAC 19-1-5 "Law enforcement agency" defined

Authority: IC 6-7-3-12; IC 6-8.1-3-3
Affected: IC 6-7-3-16

Sec. 5. "Law enforcement agency" means an agency or department of any level of government whose principal function is the apprehension of criminal offenders. *(Department of State Revenue; 45 IAC 19-1-5; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1718)*

45 IAC 19-1-6 "Manufacture" defined

Authority: IC 6-7-3-12; IC 6-8.1-3-3
Affected: IC 6-7-3-4

Sec. 6. (a) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container.

(b) "Manufacture" also means the organizing or supervising of an activity described in subsection (a).

(c) "Manufacture" does not mean the following:

(1) The preparation or compounding of a controlled substance by an individual for personal use.

(2) The preparation, compounding, packaging, or labeling of a controlled substance by a practitioner or the practitioner's agent:

(A) as an incident to the administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(B) for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(d) As used in this section, "practitioner" means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other institution or individual licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in Indiana.

(e) As used in this section, "practitioner's agent" means a person authorized to act on behalf of a practitioner or at the direction of a practitioner. *(Department of State Revenue; 45 IAC 19-1-6; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1718)*

Rule 2. Imposition and Payment of the Tax

45 IAC 19-2-1 Imposition

Authority: IC 6-7-3-12; IC 6-8.1-3-3
Affected: IC 6-7-3-5; IC 6-7-3-7; IC 35-48-3; IC 35-48-4

Sec. 1. (a) The controlled substance excise tax is imposed on a controlled substance that is:

(1) delivered;

(2) possessed; or

(3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

(b) The tax is not imposed on a controlled substance that is distributed, manufactured, or dispensed by a person authorized to do so under IC 35-48-3.

(c) A person who delivers a controlled substance to a law enforcement officer is not relieved of the duty to pay the tax. *(Department of State Revenue; 45 IAC 19-2-1; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1719)*

45 IAC 19-2-2 Assessment

Authority: IC 6-7-3-12; IC 6-8.1-3-3
Affected: IC 6-7-3-13; IC 6-7-3-14; IC 6-8.1-5-3

Sec. 2. (a) It shall be prima facie evidence that a controlled substance exists when it is detected in a field test conducted by a law enforcement agency. This evidence may be refuted by a test performed by a certified laboratory.

(b) An assessment for the tax due under this article is a jeopardy assessment subject to the collection provisions of IC 6-8.1-5-3.

(c) However, the jeopardy assessment lien shall be secondary to the following:

(1) The seizure and forfeiture authority of the state board of pharmacy under IC 16-6-8.5 *[IC 16-6 was repealed by P.L.2-1993, SECTION 209, effective July 1, 1993.]*.

(2) The forfeiture provisions of IC 34-4-30.1 *[IC 34-4 was repealed by P.L.1-1998, SECTION 221, effective July 1, 1998.]*.

(3) The seizure and forfeiture provisions of IC 34-4-30.5 *[IC 34-4 was repealed by P.L.1-1998, SECTION 221, effective July 1, 1998.]* concerning racketeering activity.

(4) The seizure and forfeiture provisions of any federal law.

(Department of State Revenue; 45 IAC 19-2-2; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1719)

45 IAC 19-2-3 Payment

Authority: IC 6-7-3-12; IC 6-8.1-3-3
Affected: IC 6-7-3

Sec. 3. (a) Payment of the tax is due when a person receives delivery of, takes possession of, or manufactures a controlled substance.

(b) The tax is calculated by multiplying a certain dollar amount times each gram, and a proportionable amount for each fraction of a gram, of a controlled substance as follows:

(1) Forty dollars ($40) on each gram of a Schedule I, II, or III substance.

(2) Twenty dollars ($20) on each gram of a Schedule IV substance.

(3) Ten dollars ($10) on each gram of a Schedule V substance.

(c) The weight of the controlled substance is determined without regard to whether the substance is pure, impure, or diluted.

(d) Payment will not be accepted and a receipt will not be issued on a controlled substance weighing less than one (1) gram in total.

(e) Payment of the tax may be made by mail or in person on a form prescribed by the department. The district offices of the department may be utilized for the purpose of paying the tax.

(f) The department shall issue a receipt which will include the following information:

(1) The amount of tax paid.

(2) The schedule number of the controlled substance.

(3) The weight in grams of the controlled substance.

(4) The expiration time, to the hour and minute, of the receipt.

(g) In order to receive credit for taxes paid, a person who delivers, possesses, or manufactures a controlled substance must have a valid receipt in such person's possession at the time the tax is imposed under section 1 of this rule.

(h) A receipt is valid proof of payment for forty-eight (48) hours after the payment is received by the department.

(i) At the time the tax is paid, a person may not be required to give any information that will reveal the person's identity. *(Department of State Revenue; 45 IAC 19-2-3; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1719)*

Rule 3. Refunds and Credits

45 IAC 19-3-1 Refunds

Authority: IC 6-7-3-12; IC 6-8.1-3-3
Affected: IC 6-7-3

Sec. 1. (a) Except as provided in subsection (b), a refund will not be made by the department for the payment of the controlled substance excise tax.

(b) A refund of taxes paid may be made if such taxes were paid as a result of a jeopardy assessment and the department finds that the assessment is incorrect and the taxes were overpaid. *(Department of State Revenue; 45 IAC 19-3-1; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1719)*

45 IAC 19-3-2 Credits

Authority: IC 6-7-3-12; IC 6-8.1-3-3
Affected: IC 6-7-3

Sec. 2. (a) Credit for a similar tax paid to another state may be given if such payment is evidenced by stamps affixed to the controlled substance.

(b) Any credit given in subsection (a) shall be equal to the lesser of the actual taxes paid the other state or the amount due to Indiana on the controlled substance under this article. *(Department of State Revenue; 45 IAC 19-3-2; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1720)*

Rule 4. Controlled Substance Tax Fund

45 IAC 19-4-1 Payment of awards

Authority: IC 6-7-3-12; IC 6-8.1-3-3
Affected: IC 6-7-3-16

Sec. 1. (a) Awards, based upon a percentage of the tax collected under this article, may be paid to any person or law enforcement agency providing information leading to the collection of such tax.

(b) For purposes of an award under subsection (a), a tax is not collected until all protest periods have expired, all appeals have been adjudicated, and all periods for filing a claim for refund have expired.

(c) A person claiming an award must file such claim on a form prescribed by the department within ninety (90) days of the day of the arrest leading to the assessment of tax. The claim form must be signed by the claimant under penalty of perjury or it is not valid.

(d) Awards will not be made to the following:

(1) A law enforcement officer.

(2) An employee of the department.

(3) An employee of the Internal Revenue Service.

(4) An employee of the federal Drug Enforcement Agency.

(Department of State Revenue; 45 IAC 19-4-1; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1720)

45 IAC 19-4-2 Method of payment

Authority: IC 6-7-3-12; IC 6-8.1-3-3
Affected: IC 6-7-3-16

Sec. 2. (a) An award paid shall be based on the collections from each individual assessment that resulted from information supplied to the department by the claimant.

(b) If a law enforcement group is due an award, the department will divide the award equally among the participating agencies. *(Department of State Revenue; 45 IAC 19-4-2; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1720)*

Rule 5. Penalties

45 IAC 19-5-1 Civil penalties

Authority: IC 6-7-3-12; IC 6-8.1-3-3
Affected: IC 6-7-3-11

Sec. 1. In addition to the tax, a person who fails or refuses to pay the tax imposed by this article is subject to a penalty of one hundred percent (100%) of the tax due. *(Department of State Revenue; 45 IAC 19-5-1; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1720)*

45 IAC 19-5-2 Criminal penalties

Authority: IC 6-7-3-12; IC 6-8.1-3-3
Affected: IC 6-7-3-11; IC 35-48-4-11

Sec. 2. (a) Except as provided in subsection (b), a person who knowingly or intentionally delivers, possesses, or manufactures a controlled substance without having paid the tax imposed by this article commits a Class D felony.

(b) Subsection (a) does not apply to a person in violation of IC 35-48-4-11, if the violation is a Class A misdemeanor. *(Department of State Revenue; 45 IAC 19-5-2; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1720)*

*