



DEPARTMENT OF REVENUE
INDIANA GOVERNMENT CENTER NORTH
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**INFORMATION BULLETIN #28
INCOME TAX
NOVEMBER 2016
(Replaces Information Bulletin #28, dated May 2012)
Effective Upon Publication**

SUBJECT: Application of State and County Income Taxes to Residents with Out-of-State Income and Nonresidents with Indiana Source Income

REFERENCES: IC 6-3-1-3.5; IC 6-3-1-12; IC 6-3-1-13; IC 6-3-2-2; IC 6-3-3-3; IC 6-3-4-15; IC 6-3-5-1

DISCLAIMER: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on either the department or the taxpayer. Therefore, information provided in this bulletin should serve only as a foundation for further investigation and study of the current law and procedures related to its subject matter.

SUMMARY OF CHANGES

Aside from minor, technical changes, this bulletin is changed to reflect the repeal of the non-Indiana locality deduction, to reflect the allowance of credit against all county income taxes, and to state that California is no longer a “reverse-credit” state effective for the 2017 tax year.

INTRODUCTION

Full-year Indiana residents must report all income that is reported for federal income tax purposes on their Indiana individual income tax return (Form IT-40). This includes all income, even if it is derived from sources outside Indiana.

Full-year nonresidents who received income from Indiana sources must file an Indiana individual income tax return (Form IT-40PNR). They are subject to tax on that part of their total federal income that is derived from or connected with Indiana sources. If the nonresident’s only Indiana source income was from an Indiana partnership or S corporation, the nonresident shall be included in the entity’s composite return and is not be required to file Form IT-40PNR, though the individual may file a Form IT-40PNR if the individual so chooses.

Part-year Indiana residents must file an Indiana individual income tax return (Form IT-40PNR). They are subject to tax on that part of their total federal income that was received while they

were residents of Indiana. In addition, they are also taxable on income from Indiana sources received while they were nonresidents of Indiana.

If a joint federal income tax return is filed, a joint Indiana return is also required. If separate federal income tax returns are filed, separate Indiana returns are also required. If one spouse is a full-year Indiana resident, the other spouse is a non-resident for all or part of the year, and the spouses file a joint federal income tax return, the couple must file a joint Form IT-40PNR, reporting their respective incomes as stated above.

I. INCOME RECEIVED FROM INDIANA SOURCES

Income received from Indiana sources is considered Indiana income to nonresidents, except certain types of Indiana source income subject to tax only by the taxpayer's state of legal residence. Interest, dividends, royalties, and gains from the sale of capital assets are subject to tax only by the taxpayer's state of legal residence unless such income results from the conduct of a trade or business in Indiana. If a trade or business is conducted in Indiana, the income should be reported as Indiana income.

Income from a qualified pension, annuity, or profit sharing plan is subject to tax by the taxpayer's state of legal residence. Lump sum distributions from qualified plans are subject to tax by the state that, at the time of distribution, is the taxpayer's state of legal residence.

Deferred compensation other than from a qualified retirement plan, accumulated vacation, bonus, severance, sick pay, or income from a stock option plan are directly attributable to services performed and are taxable by the state where the services were performed.

II. STATE TAX AGREEMENTS

Taxpayers may be subject to individual income tax by both their state of residence and the state from which the income is derived. The state of Indiana has entered into agreements with several states to eliminate the requirement of paying tax to two states on the same income. Tax treatment of out-of-state income depends upon the type of income and the state from which the income is derived.

In the case of tax credits, Indiana only allows credits for individual income tax paid to other states or localities. Other taxes such as property taxes, corporate income taxes, and unincorporated business taxes are not allowed as a basis for claiming such credits. A worksheet indicating how the credit was computed and a copy of the tax return filed with the other state must be attached to the Indiana return. Withholding statements or other evidence of tax payments are not accepted. A copy of Federal Form 1116 (Computation of Foreign Tax Credit) must be attached if the credit is claimed for tax paid to a foreign country.

In computing the credit allowed by Indiana, adjusted gross income that is subject to tax in both states should be used as a basis for calculating the allowable credit. Adjustments that increase or decrease the taxable amount in other states should not be considered in calculating the allowable

credit. For example, State A allows a deduction for medical expenses, but Indiana does not; therefore, the credit would be based on the income before the medical expense deduction.

III. RECIPROCAL AGREEMENT STATES

Five states have a reciprocal agreement with the state of Indiana. They are Kentucky, Michigan, Ohio, Pennsylvania, and Wisconsin. All salaries, wages, tips, and commissions earned in these states by an Indiana resident must be reported as if they were earned in Indiana. A credit cannot be taken for any taxes withheld by or paid to any of these states in connection with income from salaries, wages, tips, and commissions. If taxes have been withheld or paid to any of these states, a claim for refund should be filed with that state by filing that particular state's income tax form for nonresidents.

Residents of Kentucky, Michigan, Ohio, Pennsylvania, and Wisconsin who have Indiana income will report and pay tax on that income to their state of residence.

If a resident of one of the above states has wages, salaries, tips, or commissions from Indiana sources, and the individual's only income from Indiana sources is wages, salaries, tips, or commissions, Form IT-40RNR must be filed. A credit for Indiana state and county tax withholding amounts will be allowed, and any Indiana county tax liability will be figured. If a resident of one of the above states has income from Indiana other than wages, salaries, tips, or commissions, Form IT-40PNR must be filed.

IV. REVERSE CREDIT AGREEMENT STATES

The reverse credit agreement applies to Indiana residents who have income from the following jurisdictions and to residents of those jurisdictions who have income from Indiana. Included are Arizona, Oregon, and Washington, D.C. **Effective for tax years 2017 and later, California is no longer treated as a reverse credit state.**

For example, a resident of Indiana with rental income from property owned in a reverse credit state will file a resident Indiana return and include the rental income on the Indiana return. The taxpayer will file a nonresident return for the state where the income was earned and claim a credit for the taxes paid to Indiana on the rental income.

A resident of a reverse credit state with income from Indiana will file a resident return with his state of residence and include the Indiana income. The taxpayer will then file an Indiana Form IT-40PNR and claim a credit for taxes paid to the state of residence for the Indiana source income.

V. STATES WITH NO AGREEMENT WITH INDIANA

When a person receives income from any state, possession, or foreign country other than those covered in Sections III and IV, the taxpayer might be required to pay income taxes to both entities. The taxpayer may take a credit for taxes paid to other states against the taxpayer's

Indiana adjusted gross income tax liability. **Effective for tax years 2017 and later, California is considered a state without an agreement.**

The credit is equal to the least of the following:

- The amount of income tax actually paid to the other state, possession, or foreign country on income from that jurisdiction;
- An amount equal to the Indiana income tax rate multiplied by the adjusted gross income taxed by both Indiana and the jurisdiction; or
- The amount of Indiana adjusted gross income tax due to Indiana for the tax year.

List of states with no agreement:

Alabama	Kansas	New Mexico	West Virginia
Arkansas	Louisiana	New York	
California	Maine	North Carolina	
Colorado	Maryland	North Dakota	
Connecticut	Massachusetts	Oklahoma	
Delaware	Minnesota	Rhode Island	
Georgia	Mississippi	South Carolina	
Hawaii	Missouri	Tennessee	
Idaho	Montana	Utah	
Illinois	Nebraska	Vermont	
Iowa	New Hampshire	Virginia	

VI. COUNTY INCOME TAX CREDIT

All Indiana residents who are subject to a county income tax and are also required to pay income taxes to a locality outside Indiana are allowed a credit against their Indiana county tax liability.

The credit for taxes paid to a locality outside Indiana must be supported by a separate calculation of the credit. If the taxpayer is required to file a return with the locality in another state, a copy of the return must be submitted with the claim for credit. Withholding statements or other evidence of tax payment will be acceptable if no return is required to be filed with the locality outside Indiana.

The allowable credit is equal to the lesser of:

- The amount of income tax actually paid to a locality in another state;
- The amount of adjusted gross income taxed by the locality outside of the state of Indiana multiplied by the county rate to which the taxpayer is subject; or
- The amount of county tax due on the Indiana return.

The credit should be computed separately for each portion of income taxed by a locality in another state. In addition, on a joint return, the credit should be calculated separately for the

husband and wife. Any unused credit attributable to one spouse cannot be used to reduce the other spouse's county tax liability.

VII. WITHHOLDING REQUIREMENTS FOR INDIANA RESIDENTS WITH OUT-OF-STATE INCOME

When an Indiana resident earns wages in another state that also levies a withholding tax on wages and the non-resident employer does not have a business connection with Indiana, the employer is not required to withhold Indiana state and local income tax. Note: It might be prudent for the employer to voluntarily withhold state and local income taxes on the behalf of the employee or for the employee to make estimated income tax payments in accordance with the provisions found in Income Tax Information Bulletin #3, available online at www.in.gov/dor/reference/files/ib03.pdf.

When an Indiana resident earns wages in another state that also levies a withholding tax on wages and the nonresident employer has a business connection with Indiana, the employer is required to withhold both Indiana state and local income taxes, pursuant to IC 6-3-4-8(a). However, in this situation, Indiana state and local income taxes should be withheld only to the extent that the employee's Indiana liability exceeds the taxes withheld in the employee's state of employment. While IC 6-3-2-1(a) could be read to require an employer who is required to withhold the full Indiana rate (3.3% for 2016 and 3.23% for 2017 and later) over and above whatever rate the employer might be withholding with regard to another state's income tax, the department does not require this.

Example: An Indiana resident works exclusively in Illinois. The Illinois employer withholds Illinois state income taxes on behalf of the employee at 3.75% (the income tax rate in Illinois). Typically, no additional withholding is required for Indiana income tax (rate of 3.3%) because the Indiana resident will be able to claim a credit on her Indiana income tax return up to the amount paid in Illinois. Note: The previous sentence is qualified with *typically* because the credit available to the Indiana resident would apply only if the employee does actually end up paying tax in the other state. Also, if the Indiana resident lives in a county with a local income tax, it might be prudent for the employer to voluntarily withhold an amount on the behalf of the employee because the credit available for state income taxes paid to another state does not apply to local income taxes paid to localities in another state.

When an Indiana resident earns wages in another state that does not levy a withholding tax on wages and the nonresident employer does not have a business connection with Indiana, the employer is not required to withhold Indiana state and local income tax. Note: It might be prudent for the employer to voluntarily withhold state and local income taxes on the behalf of the employee or for the employee to make estimated income tax payments in accordance with the provisions found in Income Tax Information Bulletin #3, available online at www.in.gov/dor/reference/files/ib03.pdf.

When an Indiana resident earns wages in another state that does not levy a withholding tax on wages and the nonresident employer has a business connection with Indiana, the employer is required to withhold Indiana state and local income taxes, pursuant to IC 6-3-4-8(a).

More information related to Indiana state and local income tax, including withholding information, can be found in various department documents available online at www.in.gov/dor/3330.htm.



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