

SENATE BILL No. 309

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3-2-27; IC 6-5.5-1-2.

Synopsis: Income tax exemption for payroll protection loans. Provides that federal Paycheck Protection Program loans that are subsequently forgiven are not subject to Indiana adjusted gross income tax (AGI). Provides that if a taxpayer incurs an expense described in 15 U.S.C. 9005(b) that: (1) would have been deductible in determining AGI; but (2) the deduction for the expense was denied for federal purposes as the result of being paid from loan amounts forgiven or reasonably anticipated to be forgiven; the taxpayer is permitted a deduction in determining AGI in the amount that otherwise would have been allowable in determining AGI. Provides a deduction in the calculation of AGI.

Effective: January 1, 2020 (retroactive).

Buchanan, Rogers

January 11, 2021, read first time and referred to Committee on Tax and Fiscal Policy.



First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

SENATE BILL No. 309

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

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

1 SECTION 1. IC 6-3-2-27 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2020 (RETROACTIVE)]: **Sec. 27. (a) A federal**
4 **Paycheck Protection Program loan that is subsequently forgiven**
5 **pursuant to the requirements of 15 U.S.C. 9005 is not subject to**
6 **taxation under IC 6-3-1 through IC 6-3-7.**

7 **(b) If a taxpayer incurs an expense described in 15 U.S.C.**
8 **9005(b) that:**

9 **(1) otherwise would have been deductible in determining**
10 **adjusted gross income under this article; but**

11 **(2) the deduction for such expense is denied for federal**
12 **purposes under Section 265 of the Internal Revenue Code as**
13 **the result of being paid from loan amounts forgiven or**
14 **reasonably anticipated to be forgiven under 15 U.S.C. 9005;**
15 **the taxpayer is permitted a deduction in determining adjusted**
16 **gross income under this article in the amount that otherwise would**
17 **have been allowable in determining adjusted gross income under**



1 this article.

2 (c) If a pass through entity is entitled to an adjusted gross
3 income tax deduction under this section for a taxable year:

4 (1) a partner, shareholder, or beneficiary of the pass through
5 entity is entitled to the adjusted gross income tax deduction
6 under this section to which the pass through entity is entitled;
7 multiplied by

8 (2) the distributive share of income from the pass through
9 entity to which the partner, shareholder, or beneficiary is
10 entitled.

11 SECTION 2. IC 6-5.5-1-2, AS AMENDED BY P.L.234-2019,
12 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JANUARY 1, 2020 (RETROACTIVE)]: Sec. 2. (a) Except as provided
14 in subsections (b) through (d), "adjusted gross income" means taxable
15 income as defined in Section 63 of the Internal Revenue Code, adjusted
16 as follows:

17 (1) Add the following amounts:

18 (A) An amount equal to a deduction allowed or allowable
19 under Section 166, Section 585, or Section 593 of the Internal
20 Revenue Code.

21 (B) An amount equal to a deduction allowed or allowable
22 under Section 170 of the Internal Revenue Code.

23 (C) An amount equal to a deduction or deductions allowed or
24 allowable under Section 63 of the Internal Revenue Code for
25 taxes based on or measured by income and levied at the state
26 level by a state of the United States or levied at the local level
27 by any subdivision of a state of the United States.

28 (D) The amount of interest excluded under Section 103 of the
29 Internal Revenue Code or under any other federal law, minus
30 the associated expenses disallowed in the computation of
31 taxable income under Section 265 of the Internal Revenue
32 Code.

33 (E) An amount equal to the deduction allowed under Section
34 172 or 1212 of the Internal Revenue Code for net operating
35 losses or net capital losses.

36 (F) For a taxpayer that is not a large bank (as defined in
37 Section 585(c)(2) of the Internal Revenue Code), an amount
38 equal to the recovery of a debt, or part of a debt, that becomes
39 worthless to the extent a deduction was allowed from gross
40 income in a prior taxable year under Section 166(a) of the
41 Internal Revenue Code.

42 (G) Add the amount necessary to make the adjusted gross



1 income of any taxpayer that owns property for which bonus
2 depreciation was allowed in the current taxable year or in an
3 earlier taxable year equal to the amount of adjusted gross
4 income that would have been computed had an election not
5 been made under Section 168(k) of the Internal Revenue Code
6 to apply bonus depreciation to the property in the year that it
7 was placed in service.

8 (H) Add the amount necessary to make the adjusted gross
9 income of any taxpayer that placed Section 179 property (as
10 defined in Section 179 of the Internal Revenue Code) in
11 service in the current taxable year or in an earlier taxable year
12 equal to the amount of adjusted gross income that would have
13 been computed had an election for federal income tax
14 purposes not been made for the year in which the property was
15 placed in service to take deductions under Section 179 of the
16 Internal Revenue Code in a total amount exceeding the sum of:

17 (i) twenty-five thousand dollars (\$25,000) to the extent
18 deductions under Section 179 of the Internal Revenue Code
19 were not elected as provided in item (ii); and

20 (ii) for taxable years beginning after December 31, 2017, the
21 deductions elected under Section 179 of the Internal
22 Revenue Code on property acquired in an exchange if the
23 exchange would have been eligible for nonrecognition of
24 gain or loss under Section 1031 of the Internal Revenue
25 Code in effect on January 1, 2017, the exchange is not
26 eligible for nonrecognition of gain or loss under Section
27 1031 of the Internal Revenue Code, and the taxpayer made
28 an election to take deductions under Section 179 of the
29 Internal Revenue Code with regard to the acquired property
30 in the year that the property was placed into service. The
31 amount of deductions allowable for an item of property
32 under this item may not exceed the amount of adjusted gross
33 income realized on the property that would have been
34 deferred under the Internal Revenue Code in effect on
35 January 1, 2017.

36 (I) Add an amount equal to any income not included in gross
37 income as a result of the deferral of income arising from
38 business indebtedness discharged in connection with the
39 reacquisition after December 31, 2008, and before January 1,
40 2011, of an applicable debt instrument, as provided in Section
41 108(i) of the Internal Revenue Code. Subtract from the
42 adjusted gross income of any taxpayer that added an amount



to adjusted gross income in a previous year the amount necessary to offset the amount included in federal gross income as a result of the deferral of income arising from business indebtedness discharged in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument, as provided in Section 108(i) of the Internal Revenue Code.

(J) Add an amount equal to any exempt insurance income under Section 953(e) of the Internal Revenue Code for active financing income under Subpart F, Subtitle A, Chapter 1, Subchapter N of the Internal Revenue Code.

(2) Subtract the following amounts:

(A) Income that the United States Constitution or any statute of the United States prohibits from being used to measure the tax imposed by this chapter.

(B) Income that is derived from sources outside the United States, as defined by the Internal Revenue Code.

(C) An amount equal to a debt or part of a debt that becomes worthless, as permitted under Section 166(a) of the Internal Revenue Code.

(D) An amount equal to any bad debt reserves that are included in federal income because of accounting method changes required by Section 585(c)(3)(A) or Section 593 of the Internal Revenue Code.

(E) The amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation.

(F) The amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding the sum of:

(i) twenty-five thousand dollars (\$25,000) to the extent deductions under Section 179 of the Internal Revenue Code



were not elected as provided in item (ii); and
(ii) for taxable years beginning after December 31, 2017, the deductions elected under Section 179 of the Internal Revenue Code on property acquired in an exchange if the exchange would have been eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code in effect on January 1, 2017, the exchange is not eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code, and the taxpayer made an election to take deductions under Section 179 of the Internal Revenue Code with regard to the acquired property in the year that the property was placed into service. The amount of deductions allowable for an item of property under this item may not exceed the amount of adjusted gross income realized on the property that would have been deferred under the Internal Revenue Code in effect on January 1, 2017.

(G) Income that is:

- (i) exempt from taxation under IC 6-3-2-21.7; and
- (ii) included in the taxpayer's taxable income under the Internal Revenue Code.

(H) The amount that would have been excluded from gross income but for the enactment of Section 118(b)(2) of the Internal Revenue Code for taxable years ending after December 22, 2017.

(I) An amount equal to an expense incurred and described in 15 U.S.C. 9005(b) that:

- (i) otherwise would have been deductible in determining adjusted gross income under this article; but**
- (ii) the deduction for such expense is denied for federal purposes under Section 265 of the Internal Revenue Code as the result of being paid from loan amounts forgiven or reasonably anticipated to be forgiven under 15 U.S.C. 9005.**

(3) Make the following adjustments:

- (A) Subtract the amount of any interest expense paid or accrued in the current taxable year but not deducted as a result of the limitation imposed under Section 163(j)(1) of the Internal Revenue Code.
- (B) Add any interest expense paid or accrued in a previous taxable year but allowed as a deduction under Section 163 of the Internal Revenue Code in the current taxable year.



For purposes of this subdivision, an interest expense is considered paid or accrued only in the first taxable year the deduction would have been allowable under Section 163 of the Internal Revenue Code if the limitation under Section 163(j)(1) of the Internal Revenue Code did not exist.

(b) In the case of a credit union, "adjusted gross income" for a taxable year means the total transfers to undivided earnings minus dividends for that taxable year after statutory reserves are set aside under IC 28-7-1-24.

(c) In the case of an investment company, "adjusted gross income" means the company's federal taxable income adjusted as follows:

(1) Add the amount excluded from federal gross income under Section 103 of the Internal Revenue Code for interest received on an obligation of a state other than Indiana, or a political subdivision of such a state, that is acquired by the taxpayer after December 31, 2011.

(2) Make the following adjustments:

(A) Subtract the amount of any interest expense paid or accrued in the current taxable year but not deducted as a result of the limitation imposed under Section 163(j)(1) of the Internal Revenue Code.

(B) Add any interest expense paid or accrued in a previous taxable year but allowed as a deduction under Section 163 of the Internal Revenue Code in the current taxable year.

For purposes of this subdivision, an interest expense is considered paid or accrued only in the first taxable year the deduction would have been allowable under Section 163 of the Internal Revenue Code if the limitation under Section 163(j)(1) of the Internal Revenue Code did not exist.

(3) Multiply the amount determined after the adjustments in subdivisions (1) and (2) by the quotient of:

(A) 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

(B) 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.

(d) As used in subsection (c), "investment company" means a person, copartnership, association, limited liability company, 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 to be made to itself and issues in exchange for the payment:

- (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) other evidences of obligation;

entitling the holder to anything of value at some future date, if the gross payments received by the company during the taxable year on outstanding investment contracts, plus interest and dividends earned on those contracts (by prorating the interest and dividends earned on investment contracts by the same proportion that certificate reserves (as defined by the Investment Company Act of 1940) is to the company's total assets) is at least fifty percent (50%) of the company's gross payments upon investment contracts plus gross income from all other sources except dividends from subsidiaries for the taxable year. The term "investment contract" means an instrument listed in clauses (A) through (G).

SECTION 3. [EFFECTIVE JANUARY 1, 2020 (RETROACTIVE)]

(a) IC 6-3-2-27, as added by this act, applies to taxable years beginning after December 31, 2019.

(b) This SECTION expires January 1, 2024.

SECTION 4. An emergency is declared for this act.

