

## SENATE BILL No. 309

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### 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).

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## Buchanan, Rogers

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

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Introduced

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

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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



1 to adjusted gross income in a previous year the amount  
2 necessary to offset the amount included in federal gross  
3 income as a result of the deferral of income arising from  
4 business indebtedness discharged in connection with the  
5 reacquisition after December 31, 2008, and before January 1,  
6 2011, of an applicable debt instrument, as provided in Section  
7 108(i) of the Internal Revenue Code.

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

12 (2) Subtract the following amounts:

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

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

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

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

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

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

41 (i) twenty-five thousand dollars (\$25,000) to the extent  
42 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.



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

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

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

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

17 (2) Make the following adjustments:

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

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

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

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

32 (A) the aggregate of the gross payments collected by the  
33 company during the taxable year from old and new business  
34 upon investment contracts issued by the company and held by  
35 residents of Indiana; divided by

36 (B) the total amount of gross payments collected during the  
37 taxable year by the company from the business upon  
38 investment contracts issued by the company and held by  
39 persons residing within Indiana and elsewhere.

40 (d) As used in subsection (c), "investment company" means a  
41 person, copartnership, association, limited liability company, or  
42 corporation, whether domestic or foreign, that:



1 (1) is registered under the Investment Company Act of 1940 (15  
2 U.S.C. 80a-1 et seq.); and  
3 (2) solicits or receives a payment to be made to itself and issues  
4 in exchange for the payment:  
5 (A) a so-called bond;  
6 (B) a share;  
7 (C) a coupon;  
8 (D) a certificate of membership;  
9 (E) an agreement;  
10 (F) a pretended agreement; or  
11 (G) other evidences of obligation;  
12 entitling the holder to anything of value at some future date, if the  
13 gross payments received by the company during the taxable year  
14 on outstanding investment contracts, plus interest and dividends  
15 earned on those contracts (by prorating the interest and dividends  
16 earned on investment contracts by the same proportion that  
17 certificate reserves (as defined by the Investment Company Act  
18 of 1940) is to the company's total assets) is at least fifty percent  
19 (50%) of the company's gross payments upon investment  
20 contracts plus gross income from all other sources except  
21 dividends from subsidiaries for the taxable year. The term  
22 "investment contract" means an instrument listed in clauses (A)  
23 through (G).

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

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

**(b) This SECTION expires January 1, 2024.**

## 28 SECTION 4. An emergency is declared for this act.

